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John THE *Ruckell*
SPEECHES and JUDGEMENT

OF THE

RIGHT HONOURABLE

The LORDS of COUNCIL and SESSION
in SCOTLAND,

John UPON *Ruckell*

The important Cause,

His Grace GEORGE-JAMES Duke of
HAMILTON and others, Pursuers;

AGAINST

ARCHIBALD DOUGLAS, Esq; Defender.

Accurately taken down and published

BY

WILLIAM ANDERSON Writer in Edinburgh.

EDINBURGH:

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To the P U B L I C.

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D745

THE following sheets contain the opinions delivered by the judges of the court of Session in Scotland, at deciding the great cause of Douglas. The general attention which the importance and extraordinary circumstances of this cause excited, persuaded the publisher, that it would be doing an acceptable service to the public, to give them, as exactly as he could, the substance, and, as nearly as possible, the words of the several opinions. To qualify him for this task, he made himself fully acquainted with the cause; and, while the judges were delivering their opinions, he took down the greatest part of what each of them said. These notes he daily corrected and enlarged from his memory: Not satisfied with this, he got the several opinions revised by those who were best qualified to correct any errors, or to supply

ply omissions, which might have escaped: So that the present publication may be depended upon as exact and genuine.

THE long vacation which followed soon after the decision of the cause, by dispersing the gentlemen of the law, retarded the publication. The winter session has given the publisher an opportunity of making the whole more correct; and he now offers it to the public, with humble confidence, that his diligence and candor will meet with approbation.

SEVERAL of the judges, in delivering their opinions, took occasion to observe, that in a cause of such extent, they did not mean, nor was it necessary for them, to resume the whole of the facts and arguments of either party; but merely to state the outlines, and some of those circumstances which had made the strongest impression on their own minds. It would be in vain, therefore, to expect that from any single opinion,

nion,

nion, or perhaps from the whole of them taken together, a thorough knowledge of the cause can be acquired: They alone who have a previous acquaintance with at least the great lines of the cause, can reap the proper entertainment or instruction. However, to render their utility as general as possible, the publisher has caused reprint the cases of both parties, which were given in by appointment of the court a few days before the hearing of the counsel in summer 1766, in order to give a general idea of the foundations of this important suit; and as they are authentic, and the only papers which contain an abridgement of the capital facts in question, it is thought they may be of considerable use in assisting the reader to understand the import of some passages in the judges opinions, which may happen to be too briefly expressed for those who are totally unacquainted with the circumstances.

THESE cases being already in many peoples hands, are printed separately, that the speeches may be had either by themselves, or with the cases prefixed.

Edin. 12. Feb.

1768.

CON-

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T H E

LORD PRESIDENT spoke first, in
the following Manner.

MY LORDS,

IN delivering my opinion on this great and important cause, it was my resolution to have spoken last, and not until I had heard the opinions severally given by your Lordships. This was my resolution so long as we sat fourteen in number, and so long as there was a certainty, that the question could not fall to be determined by my casting vote. But, as we now sit fifteen in number, and that there is a possibility that my casting vote may be called for, I judge it my duty to speak first, to state my opinion and the grounds of it, not doubting but that, if it is erroneous, some of your Lordships who are to speak after me will correct me.

AND, in giving this my opinion, I shall state only such arguments as move me, and scarcely at all touch those which tend to support a contrary opinion; at least, until I first hear what opinions are formed by your Lordships,

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ships; for to these at present I am an entire stranger.

If I shall omit any thing, I shall hope for your Lordships indulgence to have leave to add it in the way of reply.

I agree then with the principle laid down in the defender's memorial, page 38. "That
" the acknowledgment of parents is not of it-
" self *probatio probata*; but that a proof of such
" acknowledgment, or even of habite and re-
" pute, is good presumptive evidence, and
" sufficient for a jury to serve." This prin-
ciple is true; and it is also true, that a jury
might have served, nay, ought to serve, upon
such evidence. But then it is equally true,
that when such service is brought before
this court by reduction, the verdict becomes
no more than a legal presumption, and may be
redargued by a contrary proof:—The que-
stion of fact remains to be reviewed by your
Lordships, as in place of a grand jury, and
to be tried by the rules of evidence.

EVIDENCE is either direct, or moral, or cir-
cumstantiate.

THE first leaves no room for doubt in the
breast of the judge or jury. It is sometimes
compared to mathematical demonstration.—
Such evidence is not in this cause. The se-
cond

cond equally compels the mind, from conviction, to assent; but it depends on a chain of circumstances laid together, and always introduces proofs on both sides. In such cases the judge must weigh every circumstance in the scale of justice, and give his opinion where he thinks the evidence preponderates.

It is not fair to say, that a possibility of being deceived ought to destroy a conclusion drawn from circumstantiate evidence: From the frailty of human nature, perhaps a possibility of deception attends every kind of evidence. In matters of the highest moment, even in religion, we must be satisfied with moral evidence, and are bound to form our opinions upon it. In direct evidence, two witnesses may swear falsely: *Alibi* may be proved. Circumstantiate or moral evidence is often stronger, because it hangs on many dependent circumstances, which mutually aid and support each other. Instances of this occur every day.

As to the application of certain general maxims quoted both by pursuer and defender, concerning the *res probandi*, I do not agree with either party. There is, in this case, a single fact to be determined, Is the defendant the son of Lady Jane Douglas? This

fact does not now rest on the simple acknowledgment of parents, or on habite and repute;—would to God it had; but the acknowledgment of the surviving parent is qualified by time, place, the presence of other people at the birth, and many other circumstances.

THE pursuer offers circumstantiate evidence to disprove this fact; the defender has brought evidence to support it. The proof lies before your Lordships. It then remains for me, as for others, to weigh this evidence; and, with my hand upon my heart, and as I shall answer to the supreme Judge of the world, to say whether I can or cannot assent to the following propositions, *viz.*

THAT upon the 10th day of July 1748, Lady Jane Douglas, in the house of Madame le Brune at Paris, was delivered of this defender, and of another son now dead, by the assistance of Pier la Marr a man-midwife: That Sir John Stewart became acquainted with this La Marr, in the year 1721, at Leige; was introduced to him by Colonel Fountaine; met him accidentally at Paris in the year 1748, where La Marr had come *sur une affaire épineuse*; thought he would get him cheaper than any other;

other; therefore employed him to deliver Lady Jane: That La Marr at first declined to tell Sir John Stewart where he lodged; but afterwards gave him his address (as corrected by Sir John, in his deposition 9th August 1763): That La Marr actually delivered Lady Jane: That the persons present at the delivery were Madame le Brune, her daughter, La Marr, Mrs Hewit, and Sir John: That the youngest child of whom Lady Jane was delivered was sent to be nursed at a village near Paris under La Marr's care: That La Marr corresponded with Sir John and Lady Jane concerning this child: That the letters of La Marr, produced by Sir John, are part of that correspondence: And, in fine, That the facts contained in Sir John Stewart's declaration, as to these things, are true, under the correction already mentioned as to La Marr's address; for, it must be observed, that to his dying hour, Sir John Stewart never made any other correction of his declaration whatsoever.

IN examining the evidence of any averment, built upon one's own proper fact and deed, the simplicity of the story told deserves attention; for truth is simple, and has no need of disguise. A story, to gain credit, ought to be, *1^{mo}*, Probable; *2^{do}*, Attended with

with no inconsistencies; 3^{to}, Without covering or concealment; 4^{to}, There ought to be no attempt, by false or indirect means, to support it; 5^{to}, It ought to be uniformly told, and maintained, not by the words only, but by the actions of those concerned. When these concur, the story deserves great regard, and there are strong presumptions for the truth of it. But, when these are reversed, when a story told is improbable, inconsistent, full of mystery, supported by false means, not uniformly told, nor uniformly maintained; these are legal presumptions against the truth of it, and destroy, at least weaken, the *presumptio hominis* which should support it. In such a case, the attention will be roused to weigh the evidence of the story in the nicest balance, and not to trust to general averments, or general presumptions, for the truth of it.

In applying these maxims to the cause before me, I cannot hesitate to refuse my assent to the truth of the proposition already mentioned; and am sorry to say, that I think the reasons of reduction are well supported. And as many of my objections to the truth of that proposition arise from the general completion of the cause, and the *res gesta*, which

which cannot lye, I shall begin with them: For, as to the parole-evidence, where each party charges perjury against the witnesses of the other, when I come to that, I shall not insist for full credit to all the witnesses upon either side.

I observe, therefore, in the *first* place, that the defender's story is improbable.

THAT a lady of Lady Jane's age, so near to the period of her delivery, and in her first child, should leave Aix-la-Chapelle, travel to Leige, thence to Sedan, from thence to Rheims, and from Rheims to Paris, without absolute necessity, is to me extremely improbable: That, in this journey, she should linger eight days at Sedan, and near four weeks at Rheims, when her resolution was to go on to Paris, and her delivery fast approaching, is still more so; and that she should drop her maids at Rheims, at the time when she stood most in need of them, and when they could have been carried to Paris at the expence of a few livres, is not to be believed.

It is to me equally improbable, that Lady Jane should have concealed her being with child so carefully, as it is said she did. Was not her being with child the green p'filment, and crown of all her wishes, the very end and

motive

motive which had led her to give her hand to Colonel Stewart? Why then conceal it? She had wrote to the Duke of Douglas in April 1748, acquainting him of her marriage, and of the happy consequences which might be expected from it. After this, why conceal her situation from any body? And yet, among all her correspondence, she does not acquaint one of them that she was with child, even when she is going to Paris in order to be delivered.

ALTHO' she had dropt her maids at Rheims; yet, at Paris, she hires no servants, nor any attendants whatever. Though carried thither in order to have the best assistance which France could afford, she is put into the hands of an old surgeon to a Walloon regiment, or, as the defender himself allows, into the hands of a person of no character. When she arrives at Paris, she stays four days in Godefroy's; during that time, she takes no advice as to her situation, not even from Madam Godefroy; leaves Godefroy's, and goes to a lodging, which, after the most painful search, cannot now be found, unless, as the defender asserts, we should believe it to be the house of a *garde malade*. From this she goes to another house, hired by Sir John Stewart;

Stewart; there one child appears in a very singular manner; the other is sent away with Monsieur la Marre; and though a child weak and sickly, and Lady Jane, a lady remarkable for maternal affection, is not once seen by her for sixteen months, that is, not till November 1749.

At this period, Lady Jane, Sir John, and Mrs Hewit return to Paris, in order to bring home this second child: They leave their carriage and driver without the town, and go off in a hackney coach to an unknown house. They send for La Marr, in order to get the child; La Marr makes his appearance; they set out to bring the child; Lady Jane, taken ill with a headach, is carried into another unknown house, where she remains with Mrs Hewit; mean time, Sir John goes and brings the child; and then they all set out in their return to Rheims.

As the defender's story is, in these respects, improbable; so also, I observe, *jeandly*, that, in other respects, it is inconsistent.

It is said, that Lady Jane intended to have been delivered at Rheims, but left it, as no proper assistance for her delivery was to be got there. This information Mrs Hewit swears she received from Madam Andrieux,

who had got her death by being unskilfully delivered. But, in this fact, Mrs Hewit is contradicted by the son Mr Andrieux ; and that Sir John and Lady Jane had no such intention, appears clearly from Mr Hepburn's evidence, who depones, in a very pointed and precise manner, that, at Leige, Sir John told him he was to carry Lady Jane to Paris, in order to be delivered there. If then their destination was for Paris, Was it not inconsistent, in the highest degree, to stay eight days at Sedan, and near four weeks at Rheims, that is, from the 5th of June to the end of July ; especially after, as they say, they were informed, that no proper assistance could be had at Rheims, and that they were reduced to their last guinea ?

Mrs HEWIT says, that this information concerning the want of proper assistance at Rheims, she received from Madame Andrieux. But, What says Lady Jane in the account of this matter given by her to the late Countess of Stair, as deponed to by her daughter, the Honourable Mrs Primrose, a witness above all exception, and who depones with the greatest air of candor ? “ The morning after “ I came to Rheims, says she, a Lady of that “ place desired to see me. I sent answer, that

“ I

“ I was fatigued with my journey, was still “ in bed, and could see no body.” The lady sent word, that it was a matter of consequence she had to tell me. Upon this she was admitted, she begged pardon for intruding, said it was a matter of conscience. She had heard I had come there with an intention of lying in ; but she was bound to tell me, that there was no person in that city capable of doing the office of a midwife. I said, that I had sent away my coach, and that my finances were too low to proceed further. But the lady’s arguments were so pathetic, that she persuaded me to take a post-chaise, in which Mrs Hewit and I went to Paris.

AND, upon Lady Stair’s observing, that Paris never was without British people of credit, who ought to have been at her labour, considering her age, and the enemies she had with her brother ; and that her labour should have been in a royal manner, alluding probably to the story of the Empress Constantia (words so sensible, and so much in the character of Lady Stair, that I think I could almost swear to their identity). Lady Jane answered, “ That, says she, was not in “ my power, as I was not half an hour, or
“ an

“an hour and a half in Paris, before I was
“delivered.”

As to leaving the maids at Rheims, Mrs Hewit says, they were left for want of money, and that Sir John and Lady Jane had only one guinea when they arrived at Paris: That they endeavoured to persuade their banker to advance a little money on the credit of Lady Jane's pension; but in vain. So they wrote to Monsieur Andrieux for a supply; and this supply arrived on the very day of Lady Jane's delivery. And in this Sir John Stewart agrees with her. But this fact turns now out clearly to be false. For the money sent by Monsieur Andrieux was not received by Sir John till the 26th of July. And this being the case, I would gladly know, how they fastidied former scores at Godefroy's, Le Brun's, &c.

MRS HEWIT says, that she could not keep Lady Jane in bed after the ninth day; she had wrote so to the maids at the time: Surely she could not then be mistaken. But, after Sir John Stewart's examination, she seems to have been startled; and therefore writes a letter to the Reverend Mr Harper, dated 11th January 1763, (but which she did not deliver till the 15th of March thereafter),
wherein

wherein she tells him, " That she was in a
" mistake in declaring that it was the tenth
" day after Lady Jane was delivered, that
" they left the house of Madame Le Brune ;
" for it was the sixth day." It would appear
to me, that Mr Harper had some suspicions
as to Mrs Hewit's intention in writing him
this letter, by his accuracy in marking on
the back the precise day upon which he re-
ceived it.

THE accounts given of the nurses are also
full of inconsistencies ; but I shall not enter
upon them.

I proceed to observe, in the *third* place,
That in this whole affair, Lady Jane Dou-
glas and Sir John Stewart affected mystery
throughout. Their very marriage is conceal-
ed from many of their countrymen, whom
they had occasion to see ; and even, when
the time of Lady Jane's delivery is at hand,
when Sir John and she are setting out from
Rheims to Paris for that purpose ; when they
are procuring recommendations from Mon-
sieur Maillefer, a man of character, the Syn-
dic at Rheims, to Monsieur Godefroy, who
was to receive them at Paris ; yet even, from
this Monsieur Maillefer do they carefully
conceal that Lady Jane was with child, or that

she was going to Paris in order to be delivered. This appears from the letter of recommendation wrote by Monsieur Maillefer to Monsieur Godefroy, and is confirmed by Monsieur Maillefer himself. He is not permitted to see Lady Jane; to him she is said to be indisposed, while, at the very time she receives visits from an Abbè Hibert, and is daily walking about in his company. Nay, the letter of recommendation from Monsieur Maillefer to Monsieur Godefroy proves more. It proves, that they used false pretences for their journey to Paris: “ Comme il aura
“ quelques emplettes a faire a Paris, je lui ai
“ dit qu’il pouvoit s’adresser a vous, comme
“ etant fort connoisseur, et que vous ne fus-
“ frierez pas qu’on le trompat.” A strange way this of recommending a Lady just going to be delivered.

During their stay at Paris, they not only conceal their being there from their countrymen; they even conceal it from Chevalier Johnston their correspondent, their friend, and cousin to Mrs Hewit. Did ever Sir John Stewart, in any other place, on any other occasion, or at any other period of his life, neglect or forsake the company of his countrymen? Was he not in use to herd
with

with them, especially with such of them as were at this time to be met with at Paris? Was there no Scots coffee-house in Paris? Did Sir John never go there? Why, or for what reason did he not? How is this conduct to be accounted for? But above all, when Sir John and Lady Jane were about to quit Paris, leaving a weak and sickly infant behind them, to be nursed at a village only three leagues distant from it; could any thing be more natural, than to have recommended this child to the care of Mr Johnston, and to have entreated him to visit it as often as convenient? Yet, no such thing is done; not even, when after their return to Rheims, they acquaint Mr Johnston of Lady Jane's delivery.

ANOTHER strange concealment, while at Paris, was, dating their letters as from Rheims, which were truly wrote from Paris: That this was done deliberately, and with design to mislead, appears from the after correspondence with Mr Haldane and Lady Mary Hamilton; a correspondence evidently tending to induce a belief, that Lady Jane and Sir John had gone no farther than Rheims, and that Lady Jane had been delivered at that place; for, in the whole of
that

that correspondence, there is not any mention made of Paris.

It is also strange, that notwithstanding the many dark and mysterious circumstances attending the accounts given of Lady Jane's delivery; notwithstanding that Sir John and Lady Jane knew well that these accounts and these circumstances were suspected; yet still, at no after period, did they ever give such a detail of particulars as could give satisfaction upon this great point, or, in the event of their death, could avail their children; but chose to rest the proof of their legitimacy upon general presumptions, and that the *onus probandi* of the contrary lay upon their adversaries. But this I will rather carry forward to my next observation, *viz.*

To the falsehoods by which the defender's cause has been supported, and by which the objections against it have been attempted to be obviated.

AND, *1mo*, The cause of Lady Jane Douglas and Sir John Stewart their coming to Rheims, is not well supported: But, as I am not now talking of the proof, except in so far as it arises from real evidence, which cannot be contradicted, I observe,

2 *do*, THAT

2d, THAT the leaving the maids at Rheims, when they could have been carried on to Paris at the expence of twelve or fourteen shillings, is a striking circumstance which remains to be obviated: The want of money, therefore, has been assigned as the cause of this. Lady Jane and Sir John are said to have been reduced to their last guinea, and when their banker at Paris would not advance, they applied to Monsieur Andrieux. In this particular Sir John and Mrs Hewit's memories are so distinct, that they remember the very critical day when Monsieur Andrieux's money arrived, *viz.* the day of Lady Jane's delivery; and so Mrs Hewit wrote to the maids at the time: Yet this, we have already seen, is altogether false. But the falsehood was absolutely necessary; for, at the time when this fact was averred, no mention had been made in this process of Godefroy or his house. It was believed, that Sir John and Lady Jane had, before the delivery, resided only in one house. By Mrs Hewit's evidence, they went directly to La Brune's; yet this house behaved to be cleared off before leaving it: Other expences also about the time of the delivery fell to be incurred; and, for paying these, money was requisite: And it was re-

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quisite also, that this money should arrive in time for that purpose.

- AND, as it is false that they received the money sent by Monsieur Andrieux sooner than the 26th, so it is equally false that they were in want of money when they arrived at Rheims; for it is in evidence, that they carried with them from Aix-la-Chapelle, a letter of credit upon Paris for near 2000 livres, which they actually received upon the 6th of July, four days before Lady Jane's delivery; and this letter of credit was so conceived as that they could have drawn the money at Rheims, if necessary.

3tio, As it was given out, that they came to Paris on purpose to procure Lady Jane better assistance in her delivery, it was incumbent on Sir John to give some account what assistance they did actually procure, and who was the midwife who delivered Lady Jane.

AND here it is to be observed, that Sir John was always distinct and pointed as to his description of La Marr; first, in his note to Mrs Napier, and next in his judicial declaration. In his note given to Mrs Napier, as early as the year 1756, he styles La Marr a Walloon, and says, that for several years he had been surgeon to a regiment: He likewise mentions the
name

name of Colonel Fontaine oculist to the invalides at Paris, and tells Mrs Napier, that Fontaine was the person who introduced him to La Marr. These things he confirms in his judicial declaration, with the addition of sundry other particulars; and these things he never amended, nor, to his dying hour, ever retracted or contradicted.

AND how was Sir John's declaration taken? In the most solemn and deliberate manner. It took up three days: Sir John had full time given to recollect every particular of the story; he was allowed to correct, to retract, and to explain, upon an after day, what he had declared upon the day preceeding; and in one word, was treated with the greatest candour. He was indeed somewhat deaf; but, to obviate any inconvenience which might thence arise, the questions asked were given to him in writing, one by one, and he was allowed time maturely to consider them, before he gave his answers.

With respect to his account of La Marr, as given in this declaration, he never pretended to amend or contradict it, except as to his address, which in his after oath he swears La Marr gave him; although in his declaration he had said the contrary. The reasons of this

this correction are too obvious; and yet, after all the deliberation and solemnity with which this declaration was taken, after all the opportunities given to Sir John to retract, explain, amend, and correct it; after he had done so in one or two articles; yet, after all this, the defender, who says he is the son of this Sir John Stewart, and values himself upon his acknowledgment, is pleased to maintain, that his father's declaration, in many points, is false and untrue, and that no regard ought to be paid to it.

etc. The forged letters, said to have been written by La Marr to Sir John Stewart, mentioned in Sir John's declaration, at once shew the falshood of that declaration, and the shameful and illegal attempts made to support the defender's story, and to obviate objections against it. The forgery of these letters was committed early, and at a time when the Delamarre, whom the defender now says was the true accoucheur, was alive, and that fair and genuine letters to prove that fact could have been procured from him. The last of the four letters mentioned in Sir John's declaration, as written to him by La Marr, appears to have been brought to Sir John in Lady Jane's presence, and to have

have been read and explained by her to Mrs Glas, &c.

BUT upon these letters, perhaps, I may touch again, when I come to consider the evidence adduced by the defender.

5th, It was necessary for Sir John and Lady Jane to obviate the many strong and striking objections to their conduct after the birth. Nothing could have been easier than to have done this, had their story been true. Truth is simple, and generally carries conviction along with it. At any rate, it is uniform; but the story told by Sir John Stewart was not so; and therefore labours under suspicion: And this leads me to observe,

In the *fourth* place, That the story told by Sir John Stewart of the defender's birth was by no means uniformly told, nor uniformly maintained. In the course of Providence, a false tale is often detected by the tellers.

As to Lady Jane's account of this event, we have none given by her, further than what passed in her conversation with Lady Sair, a conversation which, we have already observed, turns out to be false in every particular. But, with respect to Sir John, we have his declaration and his oath; and as to these, they are, in some particulars, contradicted

dicted by Sir John himself, and in others are given up by the defender as untrue.

By Sir John's oath and declaration, Lady Jane's delivery is said to have happened in the house of Madam le Brune: But, in the note given by him to Mrs Napier, it is said to have happened in the house of Madam Michell. Strange! that, in the year 1756, there should have been so great a failure in Sir John's memory. Indeed, Sir John's behaviour, when he gave this note to Mrs Napier, is very remarkable, and deserves attention: For, when pressed by Mrs Napier to tell her in what house the children were born, and who were present and assistant on that occasion? Sir John answers, That so many years had passed, and so many misfortunes had happened to him, some of which he enumerated, that he could not be so distinct in names as he could wish: That, for different reasons, Lady Jane had been obliged to change houses about the time of her lying in; one house was full of buggs; another house was smoaky; so that he could not say what precise house the children were born in; but he would consider of it at home, and make a note of these circumstances. And when still pressed by Mrs Napier to make a memorandum of such things.

things as he was sure of, he accordingly gives her a memorandum; and, *inter alia*, sets down Madam Michelle's house as the place of delivery. This seems to me to be the *original*; and here I begin to see the finger of Providence pointing to the discovery of the imposture. It is not sufficient to alledge here forgetfulness or mistake; it was too early to mistake in the 1756. It is true, that, in an after-conversation with Mrs Napier, Sir John mentions Le Brune's as the house where Lady Jane was delivered: But as it is not clear that this second conversation happened, until he knew that inquiry had been made at Madam Michelle's, and that his former story was disproved, I can pay no regard to it. It is also very material to observe, that the scroll of the letter from Mrs Hewit to the Duke of Douglas, so accidentally found, mentions Madam Michelle's house as the place of delivery. Strange! that both Sir John and she should fall into the same mistake.

BUT, how is it possible to account for the conduct of Lady Jane and Sir John Stewart, after they knew that the legitimacy of their children was suspected? Easy would it have been at that time to have put the matter beyond

yond all question. A letter by post would have done it. If that was not sufficient, a more formal inquiry might have been made; yet, in place of this, a few declarations only are got from Aix-la-Chapelle, and these merely relating to Lady Jane's pregnancy. No application is made for any proof from Paris, the principal scene of action, and which at once could have put the matter out of all doubt. Indeed, they afterwards saw the propriety, or rather the necessity, of clearing up this affair, and gave different reasons to justify their strange conduct with regard to it; but, in vain, none of them are satisfactory. At one time, Lady Jane doubts how far the making such an inquiry would be consistent with her honour. At another time, she laments the want of money to carry it on. To Mrs Menzies she boasts, that she had evidence of the birth in her pocket. And, at a late period of her life, in a conversation with Mrs Greig, she shelters herself under a legal presumption; and tells Mrs Greig, that if any body called her childrens legitimacy in question, they behoved to prove the contrary. Mrs Hewit, indeed, talks more boldly upon this subject: Walter Colvill, soon after the birth, had informed her of the
suspicious

suspicious concerning it; but she seems to despise these suspicions; and roundly tells him, that the birth was too well proved to admit of any doubt.

ALL these circumstances of improbability, inconsistency, concealment, falsehood, and vacillancy, are extremely striking; and altho' I do not argue upon them as conclusive; yet surely they are more than sufficient to awaken the attention, to lead us to examine things with accuracy and precision; to demand proof, and not to rest upon general presumptions.

AND this leads me to consider what proof has been brought by the defender in support of his averment.

THE first material fact, upon the part of the defender, is to prove the existence of the accoucheur, Pier La Marr; for, if there was no La Marr, it is impossible to believe one jot of the whole story.

The history of La Marr, as told by Sir John Stewart, and never contradicted, is, That he was a Walloon, and surgeon to a Walloon regiment, remarkable for his skill in midwifery: That, in the year 1721, Sir John Stewart acquainted with him at Leige, and was introduced to him by Colonel Fontaine:

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That,

That, when Sir John was at Paris by himself, in June 1748, he accidentally met with La Marr, and they renewed their acquaintance: That La Marr was there at that time *sur une affaire épineuse*, and was to be found at the Thuilleries, or the Luxembourg, in certain particular walks which he named, and at certain times of the day: That Sir John, for the sake of cheapness, engaged this La Marr to deliver Lady Jane; which he did accordingly: That the youngest child of whom Lady Jane was so delivered, was entrusted to La Marr's care for sixteen months; during which time, he regularly corresponded with Sir John upon that subject: And as to the letters from La Marr to Sir John produced in process, Sir John averred, That two of them were originals, and two of them copies; in one of which letters La Marr says, that he had been ten months in Naples after the year 1748.

THIS account is altogether unsupported by any evidence; and however circumstantiate it may be as to Sir John's first acquaintance with La Marr, his knowledge of his profession, manner of renewing acquaintance, writing to him, &c. it is impossible to believe it. Failure in memory may excuse mistakes as to lesser matters, or trivial circumstances, but

but cannot palliate errors in capital points. Indeed, the defender himself does not believe it; he has therefore bent his whole force to prove, that not this La Marr, but another Delamarre was the accoucheur who delivered Lady Jane, although it stands proved, that this Delamarre was no Walloon, but a native of *Montreuil sur Mer*, was only ten years old in the 1721, had never been surgeon to a Walloon regiment, had his constant residence at Paris, and was never out of it after the year 1748. Further, there is no evidence that this Delamarre was bespoke or could be bespoke as accoucheur for Lady Jane; and still less probability, that, when Lady Jane had travelled so far to procure the best assistance, Sir John would bespeak for her a low operator at the Hotel Dieu.

INDEED, according to the defender's own account, he seems to have taken no great care of his patient; for, if it was he who recommended Le Brune's, and knew that Lady Jane was to remove from thence soon after her delivery to another house, it is strange, what Mrs Hewit says, that she never saw La Marr visiting Lady Jane but once after her delivery. If it was he who provided the bad nurses, strange that he should take

no further nor better care to provide good ones. But what proves beyond contradiction, that this Delamarre was not the accoucheur, and that the story of his delivering a great foreign lady does not, and cannot apply to Lady Jane, is the time when this is said to have happened. It happened, says Menager, while Delamarre was in the Hotel Dieu. It happened, says Gilles, before the year 1748. It happened, says Cocquerell, before February 1748; for, in that month, I was married. I had left the Hotel Dieu about two months before my marriage; and La Marr had left it about a year before me.

THIS article of the time appears to me very material, clinches the whole, and proves, that the story told by Delamarre at the Hotel Dieu could not relate to Lady Jane Douglas.

BUT how did Sir John Stewart stumble upon the name of La Marr? How came he to pitch upon this name, as the name of the accoucheur who delivered Lady Jane? Perhaps Sir John was acquainted with this Delamarre, knew him as a merry companion, and pitched upon his name to help forward his story, but gave such a false description of
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the other particulars concerning him, as might be sufficient to prevent discoveries, and to obviate after inquiries. For, is it possible for any mortal to believe, if this Delamarre had truly been the accoucheur who delivered Lady Jane, that Sir John Stewart would have forged the letters from him which are now produced, when, at that very time, Delamarre was alive, was residing at Paris, and, in course of post, Sir John might have had letters from him? Delamarre lived till the year 1753, and the letters produced were forged in the year 1752.

With respect to these letters, the defender's story of this Delamarre proves their falsehood in a strong manner; and, if they are false, and false they are admitted to be, even by the defender, What becomes of the superstructure they were intended to support? They are the chief, if not the only written evidence on the part of the defender. They appear to me to have been the proofs which Lady Jane boasted to Mrs Menzies she had in her pocket. They also seem to have been the documents which Lady Jane carried to Dough-castle, to convince the Duke of Douglas. They were mentioned by Sir John to Mrs Napier; they were explained by Lady

dy Jane to her servants ; they were produced to the jury ; they were printed with the service ; yet these are forged, and, in my opinion, forged by Sir John. Is it in nature to believe, that Sir John Stewart would have forged false letters from La Marr, if, at the expence of a postage from Paris, he could have had letters which were true ?

BEFORE dismissing Sir John Stewart's declaration, permit me to observe the strange and unaccountable conduct of the defender with regard to it. He talks of his filiation, of the acknowledgement of his parents, of his habite and repute, &c. His father is examined, the person who best can tell the circumstances of his birth, whose inclination, whose interest, and whose duty it is to say every thing that can support it. The examination is gone about in the fairest, in the most solemn, in the most candid manner possible : But no sooner is it taken, than the defender rejects it, maintains it to be false, endeavours to have it suppressed, insists that it can be no evidence, and, when your Lordships justice had ordered it to be considered as evidence, he appeals from that sentence to a higher court ; though, for reasons best known to himself, he afterwards drops it.

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Did any of your Lordships ever read or hear of such a conduct? I confess I never did.

THE *second* material fact upon the part of the defender is to prove the existence of a Madame le Brun, in whose house Lady Jane was delivered; for, if there was no Madame le Brun, it is impossible to believe one jot of the story.

HERE again the ground slips from under my feet: There is not more evidence of the existence of a Madame le Brun than there is of a Pier la Marr. No such person can be found; even no such name, I mean of Madame le Brun who kept a hotel, occurs in the capitation-rolls of any kind.

THE defender is fain to suppose, that the Madame le Brun, in whose house Lady Jane was delivered, was a *garde malade*. This however is incredible: It was never once insinuated by Sir John or Mrs Hewit, not even in the letter wrote by Mrs Hewit to the maids, though a circumstance remarkable, and which, in these letters, fell naturally to be mentioned.

SIR JOHN hints as if she had been recommended by Godefroy: This is false: The proof now points as if she had been recommended by La Marr. Had this been so, Sir John could

could not have forgot it : But it was not so : The *res gesta* belies it : Even Menager himself never knew any lady of character carried to be delivered in such a house, one lady in a mask excepted.

IF La Marr had recommended Le Brun, how comes he not to have appeared sooner upon the stage, and to have been better known to Lady Jane and Mrs Hewit ? Mrs Hewit, who attended Lady Jane, swears, that previous to the delivery, she had no conversation with Lady Jane about the person who was to deliver her ; nor did she ever see Pier la Marr until she saw him in Lady Jane's room at the time of her delivery ; nor did she see him after, except once, when he called to inquire after Lady Jane and the defender. At what time, therefore, did he recommend Madame le Brun ? The thing is incredible.

THE Le Brun living on her income in the house of Travers, *rue de la Comedie*, cannot be the person pointed at. The description does not apply, and the defender cannot be allowed to found on an allegation so vague, similar in nothing but the name, when he has brought no evidence to support it. An inlying was a circumstance too material to have escaped the observation of the people of the house ;

house ; neither would it have escaped the sagacity of the defender's advisers to have made an inquiry concerning this matter when the woman was alive : But it is plain to me that the defender has caught at the similarity of the name and by that similarity means to supply a blank in the proof, which otherways he cannot account for.

A *third* material fact upon the part of the defender, is to prove the existence of Madame Michell, and that Sir John and Lady Jane lodged in her house.

And it is true, that Sir John and Lady Jane did lodge at Madame Michell's ; and though the 8th of July is marked in the *livre d'inspecteur* as the day of their entry ; yet, it appears to me, that they entered upon the 12th ; for Michell's people swear, that the marking of Fluratl and his company belongs to Sir John Stewart and his company ; and that they were the only British people at that time in the house.

There are several circumstances which happened at Madame Michell's which deserve to be mentioned.

And, *first*. There is no appearance of Pier la Murr at Madame Michell's. The people
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of that house do not seem to have known any thing about him.

Secondly, THE second child, Sholto, is never heard of at that house.

Thirdly, THE defender does not appear immediately on their going there, nor till after the *enlèvement* of Mignon's child.

Fourthly, THE people in that house swear, that when the defender was brought, he was brought from St Germain, the very place where Sir John, in his declaration, says he went to seek for a nurse to him. Indeed, as to the nurses, the accounts given are full of contradictions. I will not run through them.

THE *last* material fact upon the part of the defender, and which ought to have been ascertained without the least shadow of ambiguity, is the day of Lady Jane's delivery; and this day the defender positively says was the 10th day of July 1748. One thing is evident, that if Mrs Hewit spoke true, the day of delivery behoved to be at least nine days before their coming to Madame Michell's; for, so writes she to the maids, that Lady Jane could not be kept in bed after the ninth day. This indeed may bring the day of delivery to the 10th; and yet, how to reconcile this letter

ter to the maids with her after letter to the Reverend Mr Harper, I know not.

But indeed as to this point, *viz.* That the day of delivery was the 10th day of July 1748, we meet with insuperable difficulties.

AND, in the *first* place, in all the letters wrote by Sir John and Mrs Hewit upon the 10th of July, there is no mention made of Lady Jane's delivery. The defender is aware of the force of this objection; and therefore insists, that although these letters bear date upon the 10th; yet they were actually wrote upon some day preceeding. But where is the evidence of this? The letters themselves bear to be wrote upon the 10th, and must be supposed to have been so, unless the contrary is proved. But the contrary is not proved. If a latitude of this kind is to be allowed; if mere supposition is to be held sufficient to destroy evidence such as this, all possibility of detection would be at an end.

BUT, *2dly*, There is a letter from Mrs Hewit to the maids, bearing date the 21d of July 1748, from which it appears, that she had wrote them a former letter upon the 11th; and yet that former letter had made no mention of Lady Jane's delivery: How is this to be accounted for? Mrs Hewit herself saw the
force

force of this objection ; and therefore endeavours to obviate it, by saying, in her letter already mentioned, of the 22d, that her former letter, though dated upon the 11th, ought to have been dated upon the 10th; and that this mistake had happened through hurry. In the former case, the defender maintained, that the letters dated upon the 10th ought to be dated upon the 9th, otherways he seems to acknowledge they ought to have made mention of Lady Jane's delivery. Here again he insists, that a letter dated the 11th ought to have been dated the 10th. If so, Why did not this letter make mention of Lady Jane's delivery? How are these things to be reconciled?

In the *third* place, Sir John wrote to the Earl of Crawford upon the 10th of July; so the letter bears. In this letter also, there is no mention of Lady Jane's delivery; on the contrary, Sir John says, that the happy hour was looked for daily. How is this taken off? Sir John seems to have perceived it; and therefore, in his next letter to Lord Crawford, upon the 22d of July, he slyly insinuates and says, that his former letter was of the 6th, not only in direct contradiction to the date of the letter itself, but also to the date of the
letter

letter to Mr Florentin, in which it was inclosed.

IN the *fourth* place, Sir John, in his letter to Mrs Hepburn of the 6th of August, mentions his having wrote her upon the 10th of July preceeding; and adds, that Lady Jane had been brought to bed the evening of that day; yet Mrs Hewit swears, and in her letter to the maids says, that Lady Jane was uneasy during the whole night preceeding her delivery; that about eleven in the forenoon, she turned extremely ill; and it is acknowledged by all of them, that she was not long in labour. So that, if she was delivered at all, she must have been delivered in the forenoon.

IN the *fifth* place, It cannot but appear extraordinary, that although Lady Jane is said to have been delivered upon the 10th; yet no letters were wrote notifying this event to any mortal, not even to her female friends or the maid-servants, sooner than the 22d. This appears to me extremely singular, and, I am persuaded, must do so to every person who hears me. Lady Jane appears to have married Sir John Stewart with a view to bring an heir to the great estate and noble family of Douglas. Both Sir John and she were well advanced in life, and could not
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be supposed capable of having many children. Lady Jane, in a foreign country, and far from her friends, was safely delivered of two boys : Was it not natural then for Sir John and her to hasten to convey the news of this happy event to their friends ? Is it possible to believe that Mrs Hewit would not do it to the maid-servants ? and yet, no such intimation is given. This is evident, not only because no such letters are produced, but that it appears from Lady Jane's pocket-book, that no letters were wrote betwixt the 10th and 22d.

AND thus, with respect to the day of Lady Jane's delivery, every thing is doubtful and dark ; every thing is mysterious and affected. Some particulars are given up as untrue, under the softer name of mistakes ; others are unnatural and unsupported.

BUT one thing still remains. What says the pursuer to the day of delivery ? What evidence has he brought ? or has he brought any, to shew, that the 10th day of July 1748 neither was nor could be the day of Lady Jane's delivery ? Yes, the pursuer has brought evidence upon this point, and evidence which appears to me to prove, much more clearly than could have been expected, that the whole story of Lady Jane's delivery in
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the house of Madame le Brun upon the 10th of July 1748 is fictitious and false; for that, at that period, Sir John, Lady Jane, and Mrs Hewit resided in the hotel kept by Monsieur Godefroy; and that there was in that house, not only no delivery, but no appearance of any.

I will not take up the time of the court, in recapitulating the manner in which Monsieur Godefroy's books were kept. One thing is clear, that books were kept; and though I shall not call them *per se* full evidence; yet they are strong adminicles, as being made up long ago, and without any view to support this cause. I will not enter into all the objections stated against them on the part of the defender. I think the presumptions are in favour of the books; and that I am bound to pay them great regard; especially when supported, as they are in the strongest manner, by the direct testimony of Godefroy and his wife.

It is true, the name of the person and his company, to whom the account of the 4th of July belongs, was entered blank in the book, and continues so; yet is so rivetted by circumstances, as to add faith to the oaths of Godefroy and his wife, who swear that it was o-
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pened for Sir John Stewart; and the way how it came to be opened blank is accounted for from Monsieur Maillefer's letter to Godefroy, in which he recommends Sir John Stewart and his Lady, but without telling him their names.

By this accompt, begun upon the 4th of July, the first payment made by Sir John Stewart to Monsieur Godefroy appears to have been made upon the 8th of July, a day or two after they got the money from Taffin; which, by the bye, is an additional proof of the falsehood of the story of their having first got money from Monsieur Andrieux.

THE number of persons for whom this accompt is stated tallies exactly with the number of Sir John's company; so does the article of the wine, and so does the day upon which it commences; for it is confessed on all hands, that Sir John, Lady Jane, and Mrs Hewit entered into Godefroy's house upon the 4th of July. If then this accompt does not relate to Sir John Stewart and his company, where is the accompt which does? But Godefroy and his wife swear, That this accompt does relate to Sir John Stewart. Why, or for what reason should we not believe them? I cannot suppose them perjured. I see not the least evidence

dence of it; on the contrary, Godefroy's swearing so candidly as he did, from memory, concerning the letter which he received from Monsieur Maillefer, in my apprehension, says much in his favour.

As to the two enlevements, though not by themselves sufficient, yet I cannot get them out of my mind. Strange, singularly strange it is! that they should co-incide so exactly with the events in question.

As to the enlevement of Mignon's child, it is clearly proved, that such enlevement happened in July 1748; and though I do not think myself under any necessity to maintain, that the defender is that child; yet it appears to me a strong fact, in the scale of evidence, that a child should be carried off by a foreigner, under several circumstances corresponding to Sir John and his story, particularly as to the time; for, by the delay of the feast of St Clair that year till the 22d of July, it appears to me, that the date of the enlevement of Mignon's child must either have been the 11th or the 18th of July; and the last of the two seems most probable.

The co-incidence of the other enlevement of Sanry's child is not less extraordinary. This happened in November 1749; at this
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time Sir John, Lady Jane, and Mrs Hewit were again in Paris: Surely, if they had no concern in either of these enlevements, never were people more unlucky. There is no evidence that an enlevement at Paris is an ordinary event, or that it happens frequently. Strange, that Sir John and his company should have been there at times so suspicious and unfortunate! Sanry's child is proved to have been carried off by foreigners: These foreigners three in number, having no attendants, the age of the child exactly agreeing with the supposed age of Sholto. These circumstances correspond to Sir John Stewart and his company; yet it is not the *minutiæ* of the story which move me. In a circumstantiated evidence, circumstances must be laid together. A separate link in the chain may bear a challenge; and yet the whole remain firm and impregnable.

As to the way in which this cause has been conducted by the gentlemen on both sides, I do not see any reason for blame, either upon the one side or the other; though there had been such due, yet it would not have varied my judgment; but I see none due. And as to the cry raised against the pursuer for having varied his ground, his doing so may shew spirit,

rit, as it does, but cannot influence the determination; in a labyrinth so dark and intricate, it was no wonder that the false lights hung out on the part of the defender should often mislead him.

THE witnesses are said to be low people: They are so; but they were not of the pursuer's chusing: They were chosen by the defender's supposed parents: The pursuer was obliged to follow them: He could examine no other.

BUT what could move Lady Jane to commit so great a crime as is here supposed? What could influence her to play a part so criminal, and to continue it to the last?

THAT Lady Jane was anxious to have children appears from her conversation with Mr Hepburn; and that this was her intention in marrying Sir John Stewart, appears from her letter to the Duke of Douglas. What other motive on earth could she have for marrying him? When once she had put on the mask, she was under a necessity to wear it. She had said, that the defender and Sholto were her children. Common sense, of which she had a large share, led her to behave to them as such; other's eyes & reactions would have given the lie to her words; and it is
easy

eafy to fee which of them would have been beft believed. The death-bed declarations in this caufe do not move me: When crimes are committed, the committers rarely chufe to confefs, if by concealing they can efcape that infamy which otherways would purfue them. Lady Jane could not but fee, that, when the Rubicon was paff, there was no retreating. Had fhe been tempted to have divulged a fecret fo important, the confequences would have been, infamy on her own memory, and capital punifhment on her affociates. That in Sir John's judicial declaration many things are falfe, cannot be denied. Between an oath and a declaration there is little difference; and yet Sir John, upon his death-bed, does not confefs them; and tho' he makes a death-bed declaration, takes no notice of any of them.

LADY JANE'S pregnancy is the great argument infifted in on the part of the defender. I admit that it is a ground of doubt; but it can never outweigh my ftrong conviction arifing from evidence fo circumftantiate as that which I have already obferved. One thing is ftrange, that Lady Jane's attendants fwear to her pregnancy as fo remarkable, that one would think no body, with their eyes open,
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but would perceive it. Mrs Hewit particularly mentions the size of her breasts as well as belly; yet we see even women did not perceive it until it was told them. At Rheims, Abbé Ilbert speaks of a pregnancy which could not be discovered, except when Lady Jane wanted a hoop. Lieutenant M'Lean saw it not; Querengal saw it not, until he was told of it; the company in the stage-coach saw it not.

As to the miscarriages, I like them not; they are too numerous; and, upon the whole, I am for sustaining the reasons of reduction.

L O R D

L O R D S T R I C H E N.

I AM of a very different opinion from that just now given from the chair. The proof of pregnancy strikes me so strongly in this cause, that I own I cannot get over it. I see a strong proof of it, even at a period when the marriage of Sir John Stewart and Lady Jane Douglas was not discovered. I lay a great deal of weight upon the Earl of Crawford's letter to the Duke of Douglas upon this subject. Lord Crawford would not have told a lie for the whole estate of Douglas. I cannot but think, that pregnancy may be proved so as to infer an absolute certainty of the fact. It has been said, that the proof of Lady Jane's Douglas's pregnancy depends chiefly upon eye-sight. Why, my Lords, don't we owe half our knowledge to the eye? Is it not by the eye we acquire our knowledge of astronomy, the effects of the moon, the change of tides? We know the progress of the seasons by the observation of our eye-sight; and why may not the
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advancement of pregnancy be ascertained by similar observation? I see it proved beyond controversy, that Lady Jane gradually increased in her size. Isabel Walker deposes to this so explicitly, and I believe, with so much honesty, that I own I cannot get over it; especially when we have joined to this a positive proof of Lady Jane's capacity of having children. In my confidence I believe Lady Jane Douglas was with child. Now I cannot stop; what is the natural consequence of pregnancy? Delivery. If Lady Jane was pregnant, it is clear, that she must have been delivered, or else a miscarriage must have happened, which it was undoubtedly incumbent on the pursuers to prove; as the pregnancy, once fully ascertained, lays the presumption for a full birth. This being the case, I cannot think that the defender is bound to prove his own birth. This must rest upon the acknowledgment of his parents, and upon their uniform *tractatus* or treatment of him as their son. It is incumbent upon the pursuers to disprove the birth by clear and positive evidence; and none such, in my opinion, have they been able to bring. Their story is so unnatural and so improbable, that I own it will not go down with me. The defender has one wit-

ness swearing positively that she was present at his birth. He has an uniform *tractatus parentum*, a variety of circumstances corroborative of the truth of his birth; so many circumstances, indeed, that I own they speak stronger to my mind than would a number of witnesses swearing to their having been present at the birth. When the story of the imposture, set forth by the pursuers, (which I cannot help thinking highly improbable), is compared with this, we shall soon find the balance incline to the side of the defender. Let us examine the story of the pursuers, and see if they have probability on the side of their hypothesis. Is it credible, that when Lady Jane and Sir John were so poor, that it is proved they could scarcely maintain themselves, is it credible, I say, that they should add to this poverty, by bringing upon themselves the burden of maintaining other people's children, and that too, with the danger of so much guilt as that of committing the crime of *partus suppositio*? Is it credible, that when one child would have served their purpose, they would have burdened themselves with two? Is it credible, that they would go to Paris, without any person to assist them in the commission of so dangerous a crime? And, what

what is stronger than all this, is it credible, that after they had got the imposture of the first child accomplished, and knew what a dreadful punishment they must suffer, if detected; is it credible, I say, that they would have remained so long in Paris, where they might be easily found out by those who might be in search of them? Yet this is the story of the pursuers; and, after they leave Paris, where do they go? To Dammartin, just in the neighbourhood; and where next? to Rheims; to the very place where they were most likely to be discovered. I own this will not go down with me. It was surely much more natural for them to have left France altogether after having committed so great a crime. But not only do they remain quietly and peaceably at Rheims for the space of fifteen months, where they were always in danger of being convicted, but they even go back to Paris a second time in the year 1749, again to run so dreadful a risk, and in order to pick up a poor weakly child. Can I believe this? I own I cannot. There is another circumstance too which I take into consideration, which is, that, as Lady Jane Douglas was, at this time, undoubtedly capable of having children, would she be guilty of two

such impostures, when the consequence might be to deprive her own children of their birth-right? The second child indeed (when they did find him) corresponds exactly to the accounts which they had given of him before they saw him, or knew any thing about him. Such is the story as set forth by the pursuers; surely a most improbable one. I own it will not go down with me. On the other hand, the conduct of Sir John Stewart and Lady Jane Douglas is very consistent with the notion of a true birth. Much has been said of the false accounts given by Sir John Stewart concerning the particulars of this birth; and the inference drawn from Sir John Stewart's account of the matter is, that the defender is not his son. But I humbly apprehend, that had Sir John, at the time of his declaration, even acknowledged, that the defender was not his son, that this would not have been sufficient to have set him aside after he had attained the possession of his estate, in consequence of his own acknowledgement of him as his son. Upon this point, I refer to the great Lord Stair, who expresses himself in the following words: "Filiation is presumed
"from marriage, whereby the children are
"presumed to be the lawful children of those
"who

“who are proved to have been married,
“which is yet more pregnant and favourable
“on the part of the children, to give them
“the right of aliment and succession, and is
“the probation of the marriage betwixt
“those who are presumed parents, which is
“so strong a presumption, that the mother
“acknowledging another father than he that
“is married to her will not prejudice the
“children; much less will the assertion of the
“father, that the children are not his, tho’
“he condescend upon another to be the true
“father; yet, if both the married persons do
“acknowledge, that the child is not procreate
“betwixt them, but by another as a father,
“who should also acknowledge the same,
“and own the child, it would elude the pre-
“sumption; but, if both married persons had
“owned and treated the child as theirs, the
“concurring testimonies of all the three
“would not prejudice the child in the right
“of succession to his reputed father and mo-
“ther.”

We see then, that upon this great authority in law, that Lord Sir John and Lady Jane both positively declared, that the defendant was not their son, after having treated him as their son, for any length of time, he

must nevertheless be maintained in the possession of his estate. If then, the positive declarations of parents would not be sufficient to deprive the defender of his estate, shall we deprive him of it, from only suspicions arising from any mistakes and contradictions which may appear in Sir John's account of the matter?—I repel such reasons of reduction.

I shall now make a few observations upon the proof brought by the pursuers, no part of which, excepting that of Monsieur Godefroy's books and his oath, is totally inconsistent with the truth of the birth; that is to say, excludes the possibility of it. All the rest of the proof is merely of the negative kind, which will seldom be allowed to redargue direct positive testimony. The pursuers say there is no Pierre la Marre, nor no Madame le Brun found. Against this negative proof, we have the direct and positive testimony of Sir John Stewart and Mrs Hewit, both of whom concur in swearing, that Lady Jane Douglas was delivered of twins in the house of Madame le Brun; that La Marre was the accoucheur; and that Mrs Hewit was one of the witnesses to, the delivery. This of itself is enough; for though people thus positively sworn to had not been found at so great a distance of time, as this
process

process has been brought so late, I could not give it against the defender. But the defender has done more: He has shewn clearly, that there was in the year 1748 a La Marr an accoucheur in Paris; that he delivered a foreign Lady of advanced age of twins, who he said would be people of great rank and wealth in their country; that the one of them was strong and healthy, the other weak and sickly: The defender has also shewn, that there was at this time a Madame le Brun. Taking all these things together, can I doubt that the story told by Sir John Stewart and Lady Jane Douglas is true? The pursuers lay great stress upon Godefroy's books, together with the oath of him and his wife, and assert, that they have thereby proved an *alibi* from the 4th to the 14th of July; during all which time Lady Jane, being in the house of Godefroy, could not be delivered on the 10th in Madame le Brun's. I must here observe, that we ought to have had the books themselves produced by the pursuers; and that the producing a notorial copy of them is not enough. If Godefroy was pursuing even a trifling debt, it would not be enough. But, however, let us look into the entries made in these books, we shall see so many blanks, so much indistinct-

ness and inaccuracy, that, without believing implicitly in the memories of Monsieur Godefroy and his wife, we cannot pay any regard to the books. Godefroy and his wife, indeed, have sworn positively, that the blank article of the 4th of July does relate to Sir John Stewart and his company. But in this, it appears to me, they are very probably both mistaken, and the proof by their oaths singly suppletory of their books, which, I see, are liable to so much error, will not be sufficient to set aside the whole evidence, direct and circumstantial, which the defender has brought in support of his birth.

It remains for me to make a few observations on some circumstances of which we have heard a great deal. It has been objected, that Lady Jane, soon after her delivery, was seen going abroad and jaunting about Paris. As to this I observe contradictory evidence; but suppose it true, that she was seen going abroad; what then? it was not till the 17th day after her delivery. Much has been said as to Sir John and Lady Jane's concealment at Paris. Why, my Lords, I don't know; they are now dead; I cannot explain the reasons of their conduct, nor can the defender; but what is this at best? Much stress has been laid up-

on an alledged detection of falsehood on the part of Sir John Stewart and Mrs Hewit, in saying, that they were in want of money at Paris. It is in proof that Sir John had letters of credit for a pretty considerable sum: But, my Lords, I remember a story of a man in high rank at London, who was accused of embezzling the public money. In order to support this accusation, it was said he had a great deal of money in his hands; for he had built a magnificent house and made very fine gardens: Ay, ay, said he; but how do you know that my workmen are paid? Now, my Lords, how do we know that Sir John Stewart's debts were paid? We do not know how much of the sum contained in these letters of credit was Sir John Stewart's own. Do we not all know the character of Sir John Stewart, a thoughtless, dissipated, extravagant man? Why, he might have been owing the greatest part of this money, and had little free in his pocket by the time he got to Paris. That they were in want of money when in Paris, is positively sworn to by both Sir John and Mrs Hewit. That it may have been so, I can easily believe; it will account for many things in their conduct which may now appear very odd to us.

As

As to the two enlevements, none of them apply to Sir John Stewart. It is clear that the defender cannot be Mignon's child; for Mignon's child had fair eyes, and the defender is proved to have had black eyes when he was produced at Rhcims. The eyes of a child could never change from fair to black in so short a time as in going from Paris to Rheims. Sanry's child had as little connection with Sholto. Sanry's child, at the time it was carried off, could both walk and speak; Sholto could do neither, even after he was brought to England.

Upon the whole then, my Lords, I am clearly of opinion for repelling the reasons of reduction, and assoilzicg the defender.

L O R D

L O R D K A M E S.

I Proposed to have given my opinion at a late period of the deliberation, because I wished to hear others, and to be as ripe as possible in a cause so intricate and involved; and indeed, when I came into court yesterday, I was prepared to give my vote and no more, as nothing further appeared necessary; and I confess I would still incline to give my vote singly. But since I am now called on by your Lordship, I shall state shortly what occurs to me, without pretending to go through the whole *mare magnum* of circumstances in this cause.

THERE are different views in which the present question may be considered. In the *first* place, I shall suppose every thing at this moment entire, and that Mr Douglas were applying to be served heir to the Duke of Douglas; would I in that case, as a jurymen, find sufficient grounds to serve him? The case is intricate; and I admit, that the arguments which came with so much energy from the *learned* made great impression upon me, as a jurymen

juryman serving Mr Douglas, and had I been called on recently to give my voice, I should have been almost overwhelmed with the weight of them; but I have had time to deliberate upon the circumstances, and I feel that they are enervated and fly off.

ONE general remark occurs, and is to be kept in view in examining this cause. Facts are set forth, to appearance unaccountable, and which create suspicion and doubt, because they cannot be explained. But how are we sure that every difficulty of this kind would not vanish, if we knew the whole extent of the facts? Great allowance must be made for the lapse of time and death of witnesses. Dropping the man-servant at Leige was once founded on as a most suspicious circumstance; but accidentally the whole fact has been discovered, and it comes to nothing. This shews, that a fact or circumstance may be doubtful, merely because one half of it only is known.

IN other instances, facts wear a double face, and may be urged with equal plausibility on either side of the question: For example, Lady Jane's loitering upon the road before reaching the intended place of delivery: This, in one view, may seem unaccountable,
if

if ſhe was with child: But, on the other hand, if ſhe had no child, and if an impoſture was reſolved on, there was no occaſion to loiter. This, and every other ſcheme would have been ſo laid, as to avoid the leaſt handle for ſuſpicion. Where falſhoods are intended, great care is taken to diſguiſe them.

THERE is a *third* claſs of circumſtances, which have the appearance of being weighty; but when conſidered and ſcrutinized, the argument founded on them is diſcovered to be inconcluſive. For example, the ſervant maid Iſabel Walker was left at Rheims. This, at firſt ſight appears ſuſpicious; becauſe, why leave her at Rheims, if it was not to conceal from her what was intended to be done at Paris? Yet Iſabel Walker was a fit woman to be truſted. She muſt have committed the moſt glaring perjury before your Lordſhips, in ſupporting the cauſe of the defender, and in vindicating the memory of her deceased miſtreſs, if the pregnancy and birth were not real. She was therefore a moſt proper perſon to be uſed as an accomplice in any fraud; and, if we can ſuppoſe, that ſhe has gone ſuch lengths in the affair ſince Lady Jane's death, ſhe certainly would not be leſs ſcrupulous during her life, and when in her ſervice.

BUT

BUT suppose we allowed the fullest weight to all these circumstances urged for the pursuers, the whole of them must go for nothing, if the pregnancy of Lady Jane Douglas is established. The pursuers say, that the evidence of her pregnancy is false. I differ from them in opinion. I think the evidence on this head is complete; I have no notion of evidence more complete; and I dare not say that all the witnesses are perjured. I always expected, that some evidence would have been attempted by the pursuers of a miscarriage subsequent to the pregnancy, and that the scheme of imposing on the world would have been dated only from that period. But I see no such thing in evidence; and therefore I must necessarily yield to the proof brought by the defender.

FOR these reasons, were I here sitting as a juryman to determine whether the defender should be put in possession or not, I would give my voice for serving him, though, with doubt and diffidence, as the case is indeed the most intricate and singular that has at any time occurred, much more so than any set forth in the *Causes Celebres*.

BUT we are not now in so strait a case: Matters are greatly altered: The defender is established in the possession of his estate as
the

the son of Lady Jane Douglas : Not only has he the *tracatus* in his favour ; but he has been served heir to the Duke of Douglas : He has obtained the King's charter ; and he inherits the succession of a noble family. He must continue in the possession which he has obtained according to the legal forms of this country, until full proof is shown that he is supposititious, and that a wrong verdict has been given in his favour.

EVERY decree must be held *pro veritate* until it is reduced ; and, in this case, the strongest and most convincing proof is necessary to defeat the service of the defender. The proof which has been brought for this purpose is insufficient. I cannot be prevailed on to think, that the whole facts sworn to on the part of the defender are false and fictitious. What touches me most is the forgery of the letters ; for forged they certainly appear to be. But I cannot give so much weight, even to this circumstance, as to make it preponderate and defeat the whole evidence that appears in favour of the birth. Were I indeed to see it under Sir John Stewart's own hand, that the whole circumstances of the birth were a fiction, I would at once give up the point : But this I do not see. It was wrong in Sir John to

write

write these letters; but his having wrote them is not necessarily inconsistent with the truth of the birth. We must take along with us the circumstances in which they were wrote. Sir John was then in jail. Something perhaps, like one of the *piæ fraudes* of old, was done at a time when he could not have access to better proof. The real matter of fact could afterwards be explained.

I cannot forfeit the party of his birth-right, because his father was guilty of an imprudent act. The pursuers have no right to demand this. They themselves were guilty of a most unjustifiable step in raising the Tournelle process. This was similar to stabbing a man in the dark; and their conduct in that particular has been justly condemned. I am far from insinuating, that the gentlemen concerned in it meant any thing wrong; they had convinced themselves of the justice of their cause; and they thought every means lawful which could tend to the establishment of the imposture. This shows that men are sometimes led to do things wrong in themselves without any criminal view, but in order to serve purposes which they imagine to be good. Upon the whole, I am for repelling the reasons of reduction.

L O R D

LORD AUCHINLECK.

I HAVE considered this bulky cause with all the attention that I possibly could, and I am not surpris'd that your Lordships should differ in opinion, where there is such a variety of matter before you, two huge volumes of proof, and two most accurate, ingenious, and laborious memorials.

My Lords, contrary to my common custom of never reading law-cases in time of vacation, I have bestowed a good deal of last vacation upon this cause. But though I made very full notes, I resolv'd not to form a decisive opinion till I should be sure that I was not, as it were, drawn off at a tangent, but had the whole of the cause under my view. After much labour when I came to town, I did form an opinion; yet, I still wish'd for further evidence; and in this view, I seconded the motion made from the chair for the re-examination of Isabel Walker. She was re-examin'd: She answer'd distinctly, pointedly, and coherently, and confirm'd the humble opinion I had form'd, which, I own, she would have

have shaken, had she answered in a different manner. She was examined by the pursuers for two whole days; and examined by them, not for information, but, if possible, to get her to contradict herself. She stood it all, and never but once lost her temper; and in short, the whole of her behaviour fully satisfied me that she was speaking the truth.

I come now to tell your Lordships why I have formed my opinion for the defender.

I will first mention a few general principles. In all questions of filiation, which are questions of the greatest importance, sceptical people may suggest innumerable doubts, as sceptical people can render every thing uncertain. They may talk of the infidelity of a wife, or of the infidelity of a nurse, who may change a child, so that a man cannot be certain of his offspring: But, my Lords, it is the spirit of our law, and it is the spirit of a wise law, to disregard such possible cases, and to look for a legal certainty, not a certainty in the abstract. Strong instances of what I am saying frequently occur before this house. A man may have the misfortune to be married to a woman of infamous character; to a woman perhaps, whom he knows to be a prostitute; and yet, the children born of that

woman must be maintained by him. He is fixed down to be the father of them, if he has been within the seas the stated time. It is the genius of the law to lay down general rules by which we are to judge. Were it not for such rules in the case of filiation, we should be in a very unhappy state of uncertainty, not knowing what questions may be moved against our children after we are gone.

WITH regard to filiation, I hold it to be a rule in law, that if a husband and wife own a child as theirs, they are to be believed; and this acknowledgement of parents is *probatio probata* in favour of that child, if *direct* contrary evidence is not brought; and the longer this acknowledgement has subsisted, the greater evidence arises in favour of the child, and the stronger the proof must be to get the better of it.

IN the case before us, it is not disputed that the defender was uniformly acknowledged by Sir John Stewart and Lady Jane Douglas, as their son; and it was not such an acknowledgement as in the case of Kinnaird, where all that was said was, that the Lady had brought forth twins. They were immediately challenged; the fraud was immediately
I discovered.

discovered. But here there is an acknowledgement which carries the strongest evidence to me. Sir John and Lady Jane, for a course of years, show the warmest affection for their children; when any thing ails them, we find her fainting and showing every mark of the most tender concern; and this not ostentatiously displayed, but seen by accident by persons of the first character, who have deposed to it; and there was one circumstance which I thought very important, and with regard to which I wanted to be satisfied by Isabel Walker, which was, if these poor people (for poor they were, though of rank and quality), I say, my Lords, if these poor people, amidst all their difficulties, ever repined at the expence occasioned by these children? She answered, they never did; and (though it is not taken down), she added, that on the contrary, they constantly expressed the greatest love and fondness for them. My Lords, I confess, this circumstance weighs very strongly with me; for had these been supposititious children, I cannot believe, but that Sir John and Lady Jane would have, at some time or other, discovered that they had brought upon themselves the burden of taking care of two children not their own; and yet, here is a woman
 who

who was constantly with them, even in their most unguarded moments, and she never perceived the least appearance of any such thing.

Such is the *status* or *state* of this defender; and I do not think that he, who is a stranger to all the various facts now before us, can be answerable for any conduct of his managers. He is intitled to plead every thing; he follows out his defences as well as he can; if he fails, he cannot help it. Had he been a party in what is now charged against his parents, the case would have been different. When a person is brought to trial as a criminal, his very looks and his manner of shaping his defence will prove against him. But here, if the defender proves his filiation, it will not hurt him, though his other proof may be defective or liable to exception. And, my Lords, were this defender now before me, desiring to be served heir to Lady Jane Douglas, I, as a juryman, should think it my duty to serve him.

Now, what has the other party proved? Here again I must be allowed to say a word or two in general. I fairly own, that, in so great a cause, I wished to see a full and clear, as well as a fair proof. I wished, that the cause had arisen at a time, when we could have
 thought

thought there were no by-motives. But when was the challenge brought against this defender? Not till after he had defeated Duke Hamilton in point of law. That being the case, surely the pursuers were called upon to bring their challenge in the most formal, orderly, and unsuspecting manner.

Now, it is most material for your Lordships to observe; how the process was conducted. Justice to this defender obliges us to give all attention to this; for it is a key to the evidence against him, and to the defects in the evidence for him. Instead of applying to this court for a warrant to have a proof taken, where the witnesses might give a fair and unbiassed evidence, what were the proceedings of the pursuers? A mock criminal process (for as it could have no issue, it deserves no better name) was instituted before the Tournelle; and this mock process was backed with a *monitoire important*, which treats Sir John Stewart and Mrs Hewit as already convicted of the crime of supposition of children. They were not named indeed; but was there a woman in all France who did not know who they were by the description given, as much as if they had inserted their names?

Now,

Now, I say, here the pursuers were aiming at a most undue advantage, which was accordingly most justly condemned by this court, and by the house of Lords. These proceedings were not condemned solely because they were unprecedented, but because it was foreseen they would pervert evidence: That they would discourage those to appear who could tell the truth, and would serve as an instigation from the bishop to all the people in Paris to bring faggots to burn these convicts.

This monitoire had a strange effect. It weakened the memories of some, it strengthened the memories of other witnesses. And, my Lords, this is no random-assertion; it was what I always believed would happen; and now there is full evidence of it. I shall select a few proofs of it from these bulky volumes. The House of Lords ordered a production by these pursuers, from which we are enabled to see a good deal into this cause. In one of the pieces produced, to wit, Mr Andrew Stewart's journal, we find, that, when that gentleman conversed with Miss Louisa Hilbert, she told him, that Lady Jane had much the appearance of pregnancy, and appeared to be five months gone with child. This was
the

the account that young woman gave, when uninstructed. But, when the same Miss Louisa Hibert is called as a witness after the Tournelle proceedings, she swears she observed no marks of pregnancy. Another instance equally striking, is that of Francois La Marre, brother to Pierre la Marre. In Monsieur Danjou's first note, we find, that, upon examining this Francois, he was told by him, that his brother Pierre the accoucheur was in correspondence with Madame le Brun, and that he himself knew her. In Monsieur Danjou's second note, we find Francois telling this agent of the pursuers, that the other party had been with him, and that he had informed them of all that he knew, except as to Madame le Brun. This shows, that Francois la Marre was, by this time, pretty well disposed to conceal what might favour the defender, and that he was informed what was proper for the pursuers interest to conceal; and, when he comes to be examined, he swears directly the reverse of what he told Monsieur Danjou. Another instance is, that of Madame Michell. It is stated by the pursuers, in one of their French memorials, that she said Lady Jane had all the appearance of a woman newly brought to bed: But, after the Tournelle procès and monitoire,

monitoire, she minces down the matter, and says only, that Lady Jane had an *air malade*. These instances convey to my mind full evidence of the baneful effects of these French proceedings. I fairly own, that, if I could believe the pursuers witnesses, who were brought to swear after the Tournelle process, I should believe there was no proof of an appearance of pregnancy. For I should have Miss Hibert, who had the best occasion to observe it, swearing she observed none. Nay, I I should have Madame Sautre, who, to make dead sure of it, measures Lady Jane: But, after the glaring circumstances which I have mentioned, can I give any credit to such evidence?

AND here, on the appearance of pregnancy, I cannot help mentioning Godefroy and his wife, who are represented by the pursuers as prodigies of memory, surpassing very far old Scaliger. They mind *minutiae*, the very colour of Sir John's coat, fifteen years after they had seen him; yet both concur that they observed no marks of pregnancy about Lady Jane; and yet it is fixed, beyond possibility of cavil, that she had the appearance of pregnancy, whether real or assumed, is of no moment in this argument; and the pursuers agents in
France

France were so satisfied of her having had the appearance of pregnancy, that, in their complaints to the Tournelle, they expressly set forth that Lady Jane assumed these appearances. But, after the monitoire, it seems to have been thought it was making sure work to prove she had not even the appearance; and so these witnesses have sworn.

THERE is one branch of this huge proof where I expected to have got something that I could lay my hand upon, something of written evidence, and that was the books. But, when I look unto them, why it is a battle of books, a fair battle, the books of different inns contradicting each other; nay, some of them contradicting themselves. Such is my general view of the evidence brought by the pursuers in this great cause, except what I shall say by and by as to the conduct of the parties.

MY Lords, we have here a full and strong filiation of this defender; and I moreover see a variety of proofs, which could have come out for him, had it not been for these wrongous proceedings in France.

Now let us consider more particularly what is here brought against the defender's filiation. It may be reduced to two heads: 1st, Proofs exclusive of the real birth; 2^{dly}, Circumstances

stances which look like presumptions against it. Under the *first* head, there are but two articles, Lady Jane's not being pregnant and the *alibi* at Godefroy's; for as to the age of Lady Jane, that is now given up. Her capacity of having children is proved beyond a doubt; though I think such a proof was hardly necessary. And I cannot help observing, now that the age of Lady Jane is given up, that it was upon her age alone that all the suspicions against her were at first founded. As to the pregnancy, none of your Lordships will dispute that Lady Jane had the appearances of a woman with child; and that is sufficient to defeat any pretence that the pursuers have for pleading that she was not pregnant. For, in this whole mass of proof, there is not a grain of evidence against the real pregnancy, but the testimonies of Miss Hibert, and some others, swearing they saw no appearance of pregnancy; testimonies that merit no regard.

As to the *alibi* at Godefroy's, on the 10th of July, that, no doubt, if proved, would be decisive of the case. But I freely own, after all I have read upon this article, I think the *alibi* is very weakly stated. This rests on the testimony of a French boy and his wife, the keepers of the house, who were not even

keepers of a very much frequented inn, swearing to facts that happened fifteen years before. I do not know these people. I do not say they are perjured; I am unwilling to believe there is perjury where I can avoid it; but I think it is very clear, they have got their memories refreshed, as Miss Hibert and Francis La Marr got theirs lessened.

GODFREY and his wife have been misled by their books: They find in their *livre de l'inspecteur* Colonel Stewart and his lady; and they find in their *livre de dépense* a blank article for three persons: They see no article in their *livre de dépense* for two, and no article in their *livre de l'inspecteur* for three; so they compound matters and fill up this blank with Colonel Stewart and his company. It is acknowledged, that there are some people marked in the police-book that are not marked in the *livre de dépense*; and all those who come at night and go away in the morning are not entered in the books; so that the books were only kept as a charge against such as did not pay their bills, but run accounts; so, if a person came there, and paid every day, he never would enter the books. Such books therefore, kept so irregularly, were very improper helps to assist their memories. But there is
another

another argument against these books in this case, and I think a strong one: It is acknowledged, that Sir John and his family did not dine at the *table d'hôte*, but in their own apartment. Now, all I shall say is, that Sir John had better fortune than ever I had, if he was entertained as cheap in his own apartment as if he had gone to the *table d'hôte*, and taken a share of what was going along with the *merchants* and all sorts of people that came to the inn. People who eat in their own apartment are entertained at a higher rate, and to be sure it must be so; therefore, there is no probability that this blank article, which is according to the rate of the *table d'hôte*, can be the account of Sir John Stewart. Upon these grounds, my Lords, I think there is no evidence exclusive of the birth.

For second head of the pursuers evidence a number of circumstances which are urged as presumptions; as Lady Jane's making a long journey to Paris when she was big with child; she and her husband chusing to live by themselves in so private a manner; their writing letters from Paris, and dating them at M. l'inn; two enlevemens happening at such critical periods; La Marr and Le Brun

not

not certainly discovered; and lastly, letters forged as from Pierre La Marr.

WITH respect to these circumstances, it will occur, that they relate to the conduct of two very extraordinary persons; and some of them things which were not spoken of when Sir John Stewart was alive; such as the letters being dated at Rheims, which was not insisted on when he was examined; we may say the same thing, as to why he did not call on his countrymen? It is difficult to account for these circumstances; yet I have endeavoured to form some reasons for such conduct, and I think natural ones; for I do believe Sir John Stewart was at that time miserably poor. It is nothing to me, that he had a bill along with him for about 2000 livres. What was such a sum as 2000 livres to Sir John Stewart? We all know the character of the man, and we all know he could have got some good people to ease him of it at a fitting. I say, my Lords, they were at this time crying for want, and writing home to the Duke of Douglas, begging a supply from him. Now, it would occur to them, if we date our letters from Paris, the Duke will say, Here this woman has left Rheims, and is gone to Paris, forsooth; to send money to such people, would

would be throwing it into the sea. After they got to Paris, Lady Jane became sensible that she had done a foolish thing, as she had no occasion to go thither. She had set off from Rheims in a panic, as women in her situation often do take panics; but she was too near her delivery to go back again; so it was necessary for her to remain there till after the birth. In the mean time, she was anxious that this expedition should be concealed from the Duke, at least till she saw if he would be prevailed with to send her any money; therefore the letters were dated at Rheims; therefore Sir John Stewart, tho' fond of his countrymen, abstained from seeing them upon this occasion; therefore were they so fearful their being at Paris should get air, that they would not even trust Mr Johnston.

As to the enlevements, as they are not brought home to Sir John Stewart, they are nothing to the purpose. It is said, that Sir John and Mrs Hewit differ much in the account which they give of the nurses; I can lay no stress upon that. I have had several nurses in my family; but I confess I can give little or no account of them, except indeed of some of them who are my persons, and very little even of these.

I own it appears somewhat strange, that Sir John Stewart and Lady Jane Douglas, though informed of the suspicions which had been raised with regard to their children, did not act the rational part, and take the most proper methods to put the matter beyond doubt; for although I have said, that, according to the sound and fixed principles of law, an imperfect proof will not destroy filiation, still I think that it is the duty of parents to remove any suspicions.

BUT, my Lords, instead of indulging in theory, let us consider what is the conduct of mankind in real life: No doubt, we are to presume they will act the most rational part; but do we find them always doing so? I am afraid, my Lords, if no other conduct was to be believed but what is rational, the actions of mankind would be reduced within a very small compass. I can give a tolerable instance from the present case: Duke Hamilton was found by this court to have no interest at all in the Douglas estate; one would have thought, that it was the most prudent step for him to have appealed this question, and get it ascertained, whether he had a claim here, so as to make any thing of this suit in case the defender should lose it. His tutors, however, thought otherwise; and accordingly Duke Hamilton has

has been laying out immense sums of money upon this cause, without knowing whether he shall ever get a shilling by it; for, if Mr Douglas were out of the field, he has the same plea to maintain with others wherein he was beat by Mr Douglas. I don't think this was a prudent or proper step; yet we are sure, from these volumes, that so was done.

But there is another point as to the conduct of this cause, which appears to me to strike deep, and I have not seen any attempt upon the part of the pursuers to explain or excuse it: And I must beg liberty to state this more fully, because it has upon my mind the greatest weight, and makes me say without hesitation, no regard is due to the proof brought by the pursuers.

Your Lordships have it ascertained by proof, nay, admitted by the pursuers, that when they first set out, and for a very long time after, they affirmed, that Lady Jane could not be delivered on the 10th July in the house of Madame le Brun, because she and Sir John were at that very time in the house of Michell; for there did they then fix the *alibi*, which they would now make us believe was in Godelroy's: And, how was this *alibi* to be proved?

ved? by Michell's book, which the pursuers agents had carefully perused. Very well: In what manner was this proof to be laid before us? If the book had been as set forth, to be sure, by producing it before the commissioner who took the proof: But in place of that, very singular steps were taken; first the pursuers got the book locked up in the Tournelle, whereby the defender, and all but themselves, were debarred access to it; and then they produced one Duruiffeau, a person with many founding titles, so to be supposed a gentleman of truth and honour, and he is made to give account of this book, which, to be sure, was then intended to be laid before this Court, in place of the book itself. I will beg leave to read his evidence to your Lordships; it is the only one I shall read. He says, "That the said Michell having put in the
 "hands of the deponent his said register of
 "furnished lodgings, which commenced in
 "the month of October 1746, the depo-
 "nent did prove the state thereof, and then
 "put it in the hands of the said Monsieur
 "Buchot, who took the charge of it all, a-
 "greeable to the minute of proceedings
 "which the deponent made out thereupon
 "the 9th November 1762; which minute be-
 "ing

“ ing now shown to him, he acknowledges
 “ that the whole of it is wrote by his hand,
 “ and signed by him, and the same is now of
 “ new signed by the deponent, as relative to
 “ his deposition; and also by the commission-
 “ er. Depones, That the article concerning
 “ Monsieur Flurat a Scotsman, and his fami-
 “ ly, entered the 8th July 1748, (the said date
 “ of the day and year being in figures upon
 “ the said register), did not appear to the de-
 “ ponent to be anyways suspicious, so much
 “ the rather that there was the *visa* of the said
 “ register before and after the article in que-
 “ stion, by the inspecteur of the quarters
 “ charged with that department; and that
 “ the leaf on which this article is wrote, as
 “ well as all the other leaves of said register,
 “ were signed at the top of the first page of
 “ each leaf by Maitre du Blon, one of the de-
 “ ponent’s brethren, who signed the ordi-
 “ nance, which is at the beginning of the said
 “ register. Interrogated for the defender, de-
 “ pones, That the deponent does not perfectly
 “ remember if the *visa* which are put before and
 “ after this article, are of the same month with
 “ the article; but remembers there are, upon
 “ the same leaf on which this article is wrote,
 “ and subsequent thereto, some other articles

“ wrote, of which the deponent does not re-
“ collect the number; neither does the depo-
“ nent recollect if the *visa* of the inspecteur
“ does immediately follow the article of
“ Monsieur Fluratl, or is put after one or fe-
“ veral other articles; *but he is certain*, that
“ there is a *visa on the same page* on which the
“ article in question is wrote. Depones, so
“ far as he can remember, That the article
“ which goes before that of Monsieur Flu-
“ ratl, is of *a date anterior to that of the 8th*
“ *of July*: That the deponent remembers to
“ have asked at Michell, Of whose writing
“ was the article of Monsieur Fluratl? and
“ that *Michelle answered* the deponent, That
“ this article was neither of his writing nor
“ that of his wife; and that he presumed, *that*
“ *it was of the person who called himself Fluratl*:
“ That the book of furnished lodgings, which
“ Michell brings to the deponent every
“ month since the deponent had the depart-
“ ment of that quarter, that the deponent
“ may inspect the same, and make out from
“ it the list which he sends to the lieutenant-
“ general of police, is posterior to the year
“ 1750: That the deponent never saw the book
“ which the said Michell had for the use of
“ the commissaire for the year 1748. De-
“ pones.

“ pones, That the article concerning Fluratl
 “ appeared to the deponent to be of a hand-
 “ writing *distinct* and *different* from all the ar-
 “ ticles both upon that and the next page :
 “ That, so far as he can remember, that ar-
 “ ticle appeared to him to be of a writing
 “ *very well formed*, and that it was the best
 “ wrote of the articles on that page, or on
 “ the next.”

Now, my Lords, here is substantial evidence indeed for the pursuers, and such as would have been decisive of the cause, had we agreed to judge upon such evidence, which the pursuers agents in France appear clearly to have imagined we would do, else they never would have adduced this witness to swear concerning this book. But afterwards, being better instructed and informed, that the court would not regard the evidence of a witness, swearing concerning the particulars contained in a book, when the book itself was kept out of the way by them; and swearing, that Michell's book would contradict every thing Duruissleau had said, they at once abandoned their plea of *alibi* at Michell's, and took up with Godeiroy's; after which Michell's book is brought out to contradict an allegation that it had been vitiated,

which

which it indeed contradicted; but it opened a most shameful scene of perjury in this Duruifseau. When his oath is compared with the book, he swears, “ That he is certain, that
“ there is a *visa* on the same page on which the
“ article in question is wrote. So far as he
“ can remember, that the article which goes
“ before that of Monsieur Fluratl is of a date
“ *anterior* to that of the 8th of July: That
“ Michell said, that this article was neither of
“ his writing, nor that of his wife; and that
“ he presumed that it was of the person who
“ called himself Fluratl: That the book of
“ furnished lodgings, which Michell brings
“ to the deponent every month, is poster-
“ rior to the year 1750: That the depo-
“ nent never saw the book which Michell
“ had for the use of the commissaire for the
“ 1748: That the article concerning Fluratl
“ appeared to be of a hand-writing distinct and
“ different from all the articles both on that
“ and the next page. It appeared to be of a
“ writing very well formed, and that it was
“ the best wrote of the articles on that page
“ or on the next.” Every one of which are gross falsehoods. This, then, is an oath entirely calculated to impose upon your Lordships; therefore, my Lords, when I clearly de-
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test a witness for the pursuers, and one of the most respectable of them in point of rank, brought forward to swear the grossest falsehoods; What am I to think? And can I deprive the defender of his name and his birth-right upon the faith of a proof so carried on? I admit, that there is no such decisive evidence against the testimony of Godefroy; the reason of which is, that he swore from blank books at the distance of fifteen years; but had his books been regular, I verily believe the *alibi* at Godefroy's would have been found of a piece with that at Michell's.

As to La Marre's letters, one of my brethren touched upon *pia fraudes* being sometimes made use of, as the monks long ago made use of legends, to support a good cause; which, to be sure, is not justifiable, but yet won't make truth falsehood. Take these letters in the worst light you please, they are certainly equalled on the part of the pursuers by this oath of Duruissieu.

I had a great many other particulars to have mentioned; but the distress I am under from a severe cold, has scarce allowed me breath to go so far; so must break off.

Upon the whole, as the defender has been now nineteen years in possession of his state,
and

and fourteen of these before any challenge was brought; as his filiation by the acknowledgement of parents is full and complete, and is corroborated by the positive testimonies of unexceptionable witnesses; and as the pursuers have taken most unjustifiable steps to bring evidence against him, and to disable him from making his additional evidence still more complete, I am clearly of opinion that he ought to be assoilzied.

L O R D

LORD COALSTON.

AS so much has been wrote upon this subject, it would be very improper for me, in delivering my opinion, to run over the whole of the arguments which have been urged by both or either of the parties; and therefore, without entering minutely into particulars, I shall content myself with stating shortly the chief grounds upon which my opinion is founded; and, though an immense load of proof has been brought on both sides; yet it appears to me, that the important question now in issue between these parties, will fall ultimately to be determined upon principles of law, which are of the highest importance to the whole subjects of this kingdom.

By the laws of this country, in order to entitle any man to be served heir to his predecessors, it is not necessary for him to bring direct evidence of his filiation, or of the particular circumstances attending his birth. If that were the case, no service could ever proceed. It is impossible, in the nature of things, for
any

any man to prove, by direct evidence, that he was begotten by his reputed father; and by the death and absence of witnesses, it is even in most cases impossible to prove, by direct evidence, that he was born and brought forth by his mother. I even will adventure to say, that of the numerous audience which now hears me, there is not one of an hundred who can prove the circumstances attending his own birth; therefore, I hold it to be a settled point, upon which the whole property of this kingdom depends, that, in order to entitle one to be served heir to his predecessor, nothing more is necessary, but to prove, that he, and those through whom he connects his claim, have been acknowledged by their parents, or have been habit and repute the children of such parents.

I do not mean to say, that such proof may not be defeated by contrary evidence. What I mean is only this, that where a service hath proceeded upon such grounds, it is held as legal proof of the filiation, and must stand good till such time as it is defeated by contrary evidence.

AND therefore, to apply what has been said to the present case; as the defender's service contained clear evidence that he had
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been uniformly and constantly acknowledged by his parents; and as the truth of his birth was never doubted in France, the place where he was born, nor even at home, was there ever any thing like a general belief of the reports which were thereafter industriously propagated? So I cannot have the least doubt, that the burden of the proof lies on the pursuers to prove their alledgeance, that the defender is an impostor, and not the true son of Lady Jane Douglas.

AND as it can admit of no doubt, that the burden of the proof lies on the pursuers; so it is equally clear, that they cannot prevail without bringing the clearest and most convincing proofs in support of their alledgeance.

In short, the proofs must be such, and cannot be less than would have been necessary to have convicted Sir John Stewart and Lady Jane Douglas of the *crimen suppositi partus*; it being impossible for the court ever to find, that the defender is an impostor, without first supposing that his parents had been guilty of that infamous crime.

If such proofs would have been necessary, though the defender had proved no more but the acknowledgement of parents, much

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stronger

stronger proofs must be necessary where the defender has proved his filiation by positive and direct evidence.

In the *first* place, it is proved beyond dispute, that Lady Jane Douglas, though advanced in years, was yet in such a habit of body as to be capable of having children, both before and after the birth of the defender; which alone makes it highly improbable, and indeed scarcely credible, that she would be guilty of this imposture, whereof the consequence might have been to exclude her own children.

2dly, It is proved, as strongly as the nature of the thing can admit of, that Lady Jane was pregnant during the usual time before the birth of the defender. This is proved by the oaths of Mrs Hewit, Mrs Glass, and also by the accounts which Essie Caw gave of the matter extrajudicially before her death; and as these three persons attended Lady Jane during the whole period of her pregnancy, and had constant and immediate access to her person at all times; so the causes of knowledge they have given, and the circumstances they have deposed to, are such that they could not possibly be deceived: At the same time, their evidence is strongly supported,
not

not only by the oath of Mrs Hepburn of Keith, who has given a very strong *causa scientie*, but also by Mrs Greig, Miss Primrose, the nuns in the convent at Aix-la-Chapelle, and numbers of others who were intimately acquainted with, and had daily opportunities of seeing Lady Jane, and who have all of them deposed to all the appearances of pregnancy; and the direct and positive evidence of these witnesses cannot be invalidated by the negative testimony of the pursuers witnesses, who were absolute strangers to Lady Jane, and had only access to see her occasionally. I should have thought it much more strange, if, at the distance of seventeen years, they had sworn to appearances of pregnancy in a person whom they had never seen before that time; therefore I must again repeat what I have already said, that the proof of the pregnancy is as strong as can possibly be brought in any case. And indeed this does not seem to be much disputed on the part of the pursuers: The only method by which they attempt to evade the force of this argument is, by saying that the appearances of pregnancy might have been fictitious, and that even Lady Jane herself, and all about her, might have been deceived.

BUT I can by no means admit the validity of that answer; for, when the whole symptoms and appearances of pregnancy are proved, the pregnancy must be presumed real, unless the contrary is proved; and therefore, as in this case the pursuers have not attempted to prove either that Lady Jane was under any deception, or that she had put on feigned appearances of pregnancy, by all the rules of law, it must be presumed, that the appearances were the natural effects of a real pregnancy, till such time as the contrary is proved.

BUT, *3dly*, As I am clear the pregnancy is proved, so the defender has brought a proof of the actual delivery, as strong as could well be expected, and indeed, stronger than most men could bring at so great a distance of time. I admit, that this part of the proof rests chiefly upon the evidence of Mrs Hewit and Sir John Stewart. But then, it is material to observe, that they were the only persons then in life who were present at the birth: And this *penuria testium* was owing to the fault of the pursuers, in not bringing the process recently, as it ought to have been. At the same time, the evidence of the delivery is strongly supported, not only by the
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entry in Lady Jane's pocket-book, which proves the connection between them and Pierre la Marr; but also, and more especially, by the circumstantiate evidence founded upon the evidence of Monsieur Menager and Madame Garnier, whose oaths check in and tally so exactly with the history given by Mrs Hewit and Sir John, that it gives me full conviction, that the foreign lady, mentioned in Monsieur Menager's oath, was Lady Jane Douglas; that the defender was left in the custody of his parents; and that his twin-brother Sholto is the very child who was delivered over by Pierre la Marr into the hands of Madame Garnier, and who remained in her custody till he was carried home by his parents in the year 1749.

And, as the accidental manner in which these two witnesses, Menager and Garnier, were discovered, adds greatly to the weight of their evidence; so, when I consider the oaths of Mess. Morand and Moreau, joined with Monsieur D'Anjou's account of his conversations with Francois la Marr, I am convinced in my own mind, that this part of the evidence would have come out much stronger, if Mess. Giles and Francois la Marr had told out all they knew of the matter; and

and I should have had a better opinion of the conduct of the pursuers in this cause, if their operators in France had not so industriously concealed from your Lordships what they had learned from Menager, and Giles, and Francois la Marr, at a very early period of this cause.

If there were any defect in the evidence as to any of the particulars I have mentioned, the different parts mutually support and add weight to each other; for, as the delivery could not have happened without supposing a previous pregnancy and capacity of having children; so, on the other hand, if the pregnancy is once supposed, the delivery must necessarily follow, and must be presumed. If Lady Jane was pregnant when she came to Paris, she must have been delivered; and if she was delivered, it must be presumed to have been of the defender, as the pursuers have brought no contrary proof concerning the birth. And as the circumstances previous to the birth add great weight to the proof of the actual delivery; so it is further aided by the evidence brought of circumstances subsequent, such as the reconvalescence at the house of Michell, and at Dammartin; the tender affection and concern which Lady Jane

Jane uniformly showed to these children, till the time of her own death, which, in the opinion and belief of the witnesses, was occasioned by the distress of mind she felt upon the death of the youngest child; and as this child is proved to have had a likeness to his mother so striking, as to be taken notice of almost by every person who saw them, this is an additional circumstance, which strongly corroborates the other proofs of the filiation.

The pursuers have found it necessary to object to the credibility of Mrs Hewit, Mrs Glas, Mrs Hepburn, and have indeed used great freedom with almost all and each of the witnesses adduced for proving the pregnancy and delivery; but it appears to me, that this kind of attack is injurious to the witnesses, and altogether unmerited. The characters of Mrs Hewit and Mrs Glas have been proved by witnesses to be unexceptionable; and when they were examined in presence of the Court, they emitted their depositions in such a manner as gave me full conviction, that they were conscious of the truth of the facts to which they were deposing. And as nothing has been said to the general character of the other witnesses, so I cannot figure to myself

any reason or interest which could induce them to depart from the truth; and though, in relating such a multiplicity of facts, there are some trifling variations and mistakes; yet this was natural, and could not but necessarily happen, when witnesses were deposing from memory alone to such a multiplicity of facts which had happened at the distance of seventeen years. These variations and mistakes, which are only about accidental circumstances, are so far from detracting from the credit due to these witnesses, that, on the contrary, with me, they add weight to their testimonies; as it shows, there was no combination among them to depart from the truth.

UPON the whole of this part of the argument, the proof of the defender's filiation stands secure upon three different grounds: *1st*, The legal presumption founded on the acknowledgement of parents, joined with his being generally habit and repute their son; *2^{dly}*, The clear proof which has been brought of Lady Jane's pregnancy, from which an actual delivery must be presumed; and, *3^{dly}*, The direct proof of the actual delivery, as administered and supported, not only by the marking in Lady Jane's pocket-book, but
also

also by the oaths of Monsieur Menager and Madame Garnier, and the other witnesses who concur with them. And, when to all this I add the other circumstances subsequent to the birth which have been already mentioned, and more especially, that irresistible evidence which arises from the many letters which passed between Sir John and Lady Jane relative to these children, it appears to me, that it is impossible to bring a proof of filiation stronger than what has been brought in this case,

It remains only now to add a few words on the nature and import of the proofs brought by the pursuers. And here I begin, with observing, that they do not pretend to have brought any direct evidence of the imposture. It is only inferred from a variety of circumstances, from which the imposture is endeavoured to be established; and although I do admit, not only that all manner of crimes may be proved by circumstances, but also, that in some cases direct evidence may be defeated by circumstantiate proofs; yet I must beg leave to lay it down as a principle, in which the most important interests of mankind are concerned, that a direct proof of conclusive facts, by credible witnesses, can

never be defeated by a proof of circumstances, which are neither incompatible with, nor contradictory to the direct proofs.

IF this important principle shall ever be shaken, I do aver, that the most innocent person can have no security for his life, his liberty, or his property.

IT is well known, for instance, that the crime of theft is seldom or never proved by direct evidence; but it is generally inferred from circumstances; such as, that the stolen goods were found in the custody of the prisoner; that being in indigent circumstances, he could give no rational account how he came by them; that he had prevaricated in an extrajudicial examination; or that he had attempted to fly from justice.

THESE circumstances taken together are always held sufficient to infer the crime. But this notwithstanding, if the prisoner shall prove, by *credible* witnesses, that the goods had come into his possession in any lawful manner, all the circumstances of suspicion I have mentioned will go for nothing, and would yield to the direct evidence brought for the prisoner: For this plain reason, that a direct proof of *conclusive* facts by *credible* witnesses cannot be defeated by a proof of circumstances,

circumstances, inconsistent with the direct proofs.

THE application of this to the present case is obvious. Here the defender has proved his filiation, not only by the legal presumption founded upon the acknowledgement of his parents, but also by the direct evidence of *credible* witnesses, swearing to conclusive facts, which consisted with their own knowledge, with respect to which they could not be deceived. Whereas, on the other hand, as the pregnancy has been already established, as well as Lady Jane's capacity of having children, it will be found, that the whole of the circumstances proved, or attempted to be proved by the pursuers, one only excepted, are of such a nature, that they are neither incompatible with, nor contradictory to the proofs brought by the defender.

THE only circumstance which I admit to be inconsistent with the proof brought by the defender, is the supposed *alibi* at the house of Godefroy on the 10th of July 1748. But as this is utterly inconsistent with the pursuers original plan, by which they rested their whole cause on an alledged *alibi* at the house of Michell on that very day; so it appears to me, that the proof now brought of an *alibi*
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at the house of Godefroy is utterly insufficient; it rests wholly upon the oaths of an innkeeper and his wife swearing, at the distance of 17 years, to fill up an entry in their books, which is blank in the name, and when, at the same time, they have been obliged to confess, that they have no remembrance of the figure of the person to whom this blank article is supposed to relate; and when they were also obliged to confess, that from memory alone they were not able to fill up one other blank article in their whole books.

FOR these reasons, and others, which have been fully mentioned by my learned brother who spoke last, I am of opinion, that no conclusive argument can be drawn, either from Godefroy's books or from his oath; at least, none sufficient to defeat the positive and direct proofs brought by the defender.

THE other circumstances proved, or attempted to be proved by the pursuer, are no ways contradictory to the proofs brought by the defender.

HE is not obliged, especially at this distance of time, to account for every thing that may appear singular in the conduct of his parents; such as their leaving Aix,
and

and going to Paris; their leaving the maids at Rheims; their dating their letters at Rheims, when they were truly wrote at Paris, and their neglecting to provide nurses before the birth of the children. At the same time, in the memorial given in for the defender, very probable reasons have been assigned for all and each of these particulars, as well as for their neglecting to take the most proper methods of ascertaining the birth and legitimacy of their children.

It is possible, that Lady Jane had not been fully informed of the malicious reports that had been spread against her own honour, and the birth of her children; and it is proved, that she had been advised, that these precautions were unnecessary; and that the burden of the proof would lie on those who should afterwards dispute the birth of her children. At the same time, in fact, it appears, that she was actually in the course of providing such proofs; but was prevented from completing them by her death, which happened after the affidavits from Aix had been wrote for, and before they arrived.

And thus it is impossible for the defender now to account for the mistakes which Sir John has fallen into in that part of his declaration which relates to Pierre la Marr; yet I don't

don't see how that can affect the present question. The important point, that a Pierre la Marr did serve as accoucheur to Lady Jane Douglas, does not rest upon the declaration of Sir John Stewart, but is proved by the oath of Mrs Hewit, and strongly corroborated, not only by the entry in Lady Jane's pocket-book, but also by the oaths of Monsieur Menager and Madame Garnier, and the other witnesses who concur with them, which have always carried full conviction to my mind on this part of the evidence.

THE like observations may serve for an answer to another argument founded on the four letters which were produced in the service as from Pierre la Marr. The history of these letters, or with what view they were wrote, is not sufficiently explained from any thing of the proof. What appears to me the most probable, is the conjecture thrown out by the defender's counsel, that Sir John having mislaid the original letters, had made out these copies from memory, and had sent them to Lady Jane as the originals. But whatever might have been the view of making out these copies, there is no evidence, that they had ever been used, either by Sir John or Lady Jane; and though they had, it
does

does not occur, that ever that could have had any effect to defeat the clear and positive evidence which has been adduced by the defender.

AND as to the two enlevements which have been so much insisted on, though the witnesses adduced by the pursuers, after the instruction they had received from the Monitoire, and by the memorials which had been dispersed by the agents for the pursuers, have strained hard to give them a resemblance to the story of Sir John Stewart and Lady Jane Douglas; yet, after all, it appears that they have failed, both as to the time and as to the description of the persons; and, if the pursuers had meant to found on that part of the evidence, they should have rendered it complete by confronting the witnesses with Sir John Stewart and Mrs Hewit, which they were called upon to do by the depositions of some of the witnesses, who have deposed, that they are sure they would still know the persons by whom these enlevements were committed.

Upon the whole, therefore, of that part of the argument, the detached circumstances founded on by the pursuers are not such as to form a chain of evidence, inconsistent with the

the supposition of the defender's filiation. The utmost length they can be carried, is to be considered as grounds of suspicion; but as none of these circumstances are either incompatible with, or contradictory to the positive and direct proofs brought by the defender, they can be of no avail in the present question.

IF indeed I could bring myself to think, without evidence, that the whole of the witnesses who have sworn to the pregnancy and birth, had knowingly perjured themselves, I should then be inclined to listen to the arguments founded on the suspicious circumstances urged by the pursuers. But, as I see no reason to suspect the veracity of the defender's witnesses, so I cannot allow the direct and positive evidence given by them to be defeated by a proof of circumstances which are not contradictory to what has been sworn to by the defender's witnesses.

IF such inconclusive proofs should be laid hold of to defeat the legal presumption founded on the acknowledgement of parents, and, which is still more, the direct and positive evidence of filiation which has been here brought by the defender, I will venture to say, that no man will be secure in the enjoyment of
his

his property; for the innocent mistakes of witnesses swearing to remote facts, will always furnish the ingenuity of counsel with arguments sufficient to raise suspicions against any man's birth, which, from the nature of the thing, and penury of witnesses, must be always attended with some degree of obscurity.

If any man who now hears me were called upon without premonition, as Sir John Stewart was, to condescend upon the circumstances of his own birth, or that of his children; let him be interrogated specially upon the time when, and the place where the birth happened, on the witnesses who were present, and the midwife who performed the delivery, upon the landlady of the house, and servants of the family, and I will adventure to say, he will either be unable to condescend at all, or, if he does condescend, he and the witnesses will fall into mistakes, in which they will contradict one another. If he attempts to prove the pregnancy by witnesses, however unexceptionable, he will be told that the appearances of pregnancy are always fallacious; other witnesses will be found ready to swear that they did not observe it, and the ingenuity of counsel will be at no loss to find

other grounds of fufpicion; fuch as imprudent journies, changing of fervants, neglecting to provide nurfes, and other fuch circumftances as have been laid hold of in this cafe.

IF fuch fufpicions and conjectures fhall be held fufficient to prove a birth fuppoſitious, no man will have any fecurity, fo long as there are witneſſes in life who know any thing concerning his birth. But happy it is, that the property of mankind does not ſtand on fo precarious a footing: They ſtand ſecure upon that important principle of law, That the legal prefumption, founded on the acknowledgement of parents, eſpecially where, as in this cafe, it is corroborated by poſitive and direct proofs of filiation, cannot be defeated, either by the innocent miſtakes of witneſſes, or by a proof of inconcluſive facts, which are not inconſiſtent with the legal prefumption or direct proofs brought on the other ſide.

THESE are the reaſons which induce me to think, that the proofs brought by the purſuers are by no means ſufficient to defeat the legal prefumptions joined to the poſitive and direct proofs brought by the defender; and I am ſtrongly confirmed in this opinion, when I conſider the improbability of the
whole

whole of the hypothesis laid down by the pursuers; That persons of birth and character should at once plunge themselves into a crime of so infamous a nature, when, at the same time, they believed to see with certainty, that they could reap no benefit from it: That Lady Jane should have been guilty of this imposture at a time when she was herself capable of having children: That she and Sir John should concur together in the absurd plan of giving out that they had two children, when in fact they had only one: That after they were possessed of one strong healthy child, they should be running through the streets of Paris seeking a poor weakly child; and that, after all, by a miracle, they should find one who was the express picture of Lady Jane, and who answered exactly to the descriptions they had uniformly given of him in all their letters to their friends. These circumstances, when taken together, and joined with many others which might be mentioned, such as their loitering unnecessarily at Paris so long after the crime is supposed to have been committed, and their afterwards returning to Rheims, the very last place they had been in before they went to Paris, appear to me so highly improbable, that though no

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direct proofs had been brought by the defender, I should have thought the whole of the hypothesis laid down by the pursuers utterly incredible.

UPON the whole, the question before the Court is not, Which of these two parties has the best right to the estate of Douglas? even that is a question of some importance; but the questions before us are of a much more important and serious nature. The *first* question is, Whether the defender, the lineal heir and representative of one of the first families in Europe, is to be not only forfeited of his estate, but deprived of that rank and condition of life which he has been in possession of since the time of his birth? The *next* question necessary to be determined, is, Whether Mrs Hepburn of Keith, Miss Primrose, Mrs Hewit, Mrs Glas, Monsieur Menager, and Madame Garnier, and the whole other witnesses who have sworn to the pregnancy and delivery of Lady Jane, are to be held, in all time coming, as infamous and perjured witnesses? And the last question necessary to be determined, is, Whether Sir John, who had hitherto maintained the character of a man of honour; and whether Lady Jane Douglas, who is proved by the depositions of all the witnesses,

witnesſes, as well as by the more infallible evidence of her own letters, to have been one of the moſt accompliſhed Ladies of the age in which ſhe lived, and, at the ſame time, poſſeſſed of ſentiments of religion, honour, and virtue, ſuperior to what moſt of the human race are capable of: I ſay, the queſtion is, Whether this Lady, poſſeſſed of theſe high qualities, ſhall be declared, by this court, to have been guilty of an infamous crime, for which, if ſhe had been brought to trial, ſhe would have been condemned to ſuffer a capital puniſhment? I do not know in what light Lady Jane's letters may ſtrike your Lordſhips; but, for my own part, I never can read them without being fully ſatiſfied of two things: *1ſt*, That the perſon who wrote theſe letters could not be guilty of the crime that is here laid to the charge of Lady Jane Douglas; and, *2dly*, That the perſon who wrote theſe letters muſt have been the mother of theſe children.

In ſuch a caſe, where the characters of parties, and of ſuch parties, were ſo deeply concerned, it might have been expected, that the purſuers would have taken no ſteps which were not ſtrictly warranted by the laws of
their

their country. But, instead of this, it appears, that the most unjustifiable steps have been taken, and such as had never been attempted in any former case. The publication of the *Monitoire* behoved necessarily to raise an undue impression against the defender; and the particular description which was there given of times, places, and persons, was the very best method that could be contrived for instructing the witnesses; as, on the other hand, the sham process before the *Tournelle* (which was carefully concealed from this court at the time when Sir John Stewart's declaration was taken) was the most effectual method of shutting out all information from the defender, and of tying down the witnesses, when they came afterwards to be examined, to repeat the same story they had at first told on an examination *ex parte*.

I cannot express to your Lordships the horror I felt in my own mind, when I first heard of these proceedings, and the indignation I had when I saw the interposition of the French King procured to garble a commission issued from this court.

THESE things appeared to me utterly inconsistent with the ideas I had hitherto formed

formed of a fair and impartial trial. I then thought, and I do still think, that the conduct of the pursuers deserved a most severe animadversion from this court; and though your Lordships did not think proper to proceed to strong measures in this cause; yet I am hopeful, that the stigma which has been put upon these proceedings, first by this court, and afterwards by the House of Lords, will effectually deter others from falling into the like irregular practices in time coming. This reasonable interposition of both courts, will probably secure others from suffering by such illegal proceedings. But that will not repair the wrong done to the defender. I do not chuse to repeat what has been already said by one of my brethren. But, when I see some of the witnesses adduced for the pursuers, proved to have been guilty of gross and wilful perjury, and others of them concealing upon oath facts highly material for the defender, which they had freely spoke out in the previous examination by the pursuers; it throws a slur upon the whole of the witnesses adduced by the pursuers, and shows, but too clearly, that the illegal proceedings of the pursuers, and the inferior reports

agents employed by them, have had too much influence in this case.

UPON the whole, I am clear, that the reasons of reduction are not proved; and therefore I am for affoilzieing the defender from the reduction.

LORD

L O R D B A R J A R G.

IN delivering my opinion in this cause, it is not necessary to resume the whole facts, nor proper to repeat the arguments fully and elegantly set forth in the memorials on both sides. It is sufficient to trace the great outlines of the cause, and to mention the most material facts upon which the judgment must depend, with the evidence brought in support of them, and the consequences which seem to follow from that evidence.

THIS being an action for reducing the service of the defender, as called by the last settlement of the late Duke of Douglas to succeed to his estate, under the character of *heir relictfoeter* of the late Marquis of Douglas; and it being admitted, that the late Marquis left no surviving issue but the late Duke and his daughter Lady Jane, and that the Duke himself died without leaving any issue, the final determination of the cause must turn upon the question, Whether there is room before the court proper and satisty-

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ing evidence, that the defender is the eldest or only son of Lady Jane? If he is, the service will be supported: If he is not, it will fall to be reduced by the judgment.

BEFORE proceeding to examine the evidence, it is proper to take notice of a preliminary question much insisted upon by both parties, *viz.* On whom the *onus probandi* lies in this action? I do not think that the argument held by either side will apply to the present case.

FEW general rules will apply indiscriminately to every circumstantiated case. This case is attended with very peculiar circumstances, some of which I shall afterwards have occasion to take notice of; therefore I do not think it sufficient, on the one hand, for the defender to say, he will stand upon the possession of his state and his filiation, supported by the verdict of the inquest in the service, till they are disproved and removed by a direct proof on the part of the pursuers: Neither, on the other hand, do I think it sufficient for the pursuers to *deny*, that the defender is the son of Lady Jane Douglas, and to alledge they are not bound to prove a negative. I think it is incumbent on them to point out the defects of the evidence already pro-

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produced in the service, and to alledge and prove facts that are relevant to take off the effect of it; and that the defender, on his part, is bound to support the evidence already brought, and bring what further proof is necessary to take off the force of the pursuers' alledgeances, so far as they are proved; and that the court will judge according to what appears to be the result of the whole.

The first material fact contested upon the proof, is the pregnancy of Lady Jane Douglas.

I think the appearances of pregnancy upon Lady Jane, while at Aix-la-Chapelle and at Leige, are as fully proved as the nature of the thing will admit, by witnesses not subject to any degree of suspicion, concurring with the evidence arising from the declaration of Sir John Stewart, and the depositions of Mrs Hewit and Mrs Glafs. From the time of leaving Leige till the period assigned for the delivery, it is more feeble, such as would admit of great doubts, if it stood unsupported by the other evidence. But as that may be accounted for, from the indifference and inattention of strangers, during the short time they had occasion to see Lady Jane, and the little reason they had to suspect her being in
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that situation, from the circumstance of her travelling equipage, and not taking avowedly and constantly the character of a married woman; I incline to think it not inconsistent with the evidence of pregnancy at Aix and Leige, and so not to exclude the possibility of a delivery, if supported by probable evidence.

BUT appearances of pregnancy, if nothing further is proved, afford only a presumption, and not any real evidence of an actual delivery. The possibility and frequent occurrences of deceptions, especially in an advanced period of a woman's life, besides the risk or danger of a miscarriage, to which Lady Jane was certainly much exposed by travelling, bad roads, crowded machines, early hours, and other circumstances appearing from the evidence, concur to make some evidence, at least, of an actual delivery necessary on the part of the defender in this cause.

It is remarkable, that neither party have brought any evidence, but that of Sir John Stewart, Mrs Hewit, and Mrs Glass, of what passed during the nine days Lady Jane rested at Sedan; and it is still more remarkable, that Mrs Glass's evidence, upon all her examinations, concurs in proving Lady Jane to have
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been ill, and in danger of a miscarriage at Rhetel, having made but one day's journey from Sedan, though she had no complaints upon her arrival there, nor during her stay at that place. The whole evidence concurs to shew, that, from that time foreward, Lady Jane had no uneasiness or threatenings of a delivery, until the time actually assigned for her being delivered of the twins; all which render it most essential to the decision to attend particularly to the evidence of the most material fact to the issue of this cause.

It depends upon evidence, which I incline to divide into two classes: *1st*, The testimonies of Sir John Stewart and Mrs Hewit, with the letters produced for the defender, either received from the accoucheur or wrote to others by them and Lady Jane on that occasion: *2do*, The testimonies of Menager and Madam Garnier, relative to Lewis Pierre Delamarre, with such evidence as has been adduced concerning a Madame le Brun. I mention only Menager and Garnier, without the other witnesses who concur with them in many facts, for a reason to be afterwards assigned. It is with much regret that I am obliged to acknowledge, that neither of their testimonies, taken separately, appear to me

satisfying

satisfying evidence of the delivery, and that, taken jointly, they are inconsistent with each other.

SIR JOHN STEWART'S account of La Marr and his letters must certainly be given up; and Mrs Hewit's testimony on that point stands very much connected with it. Lady Jane too seems to have had a reliance on that correspondence. But I shall think it a favourable circumstance for the defender, if the court are of opinion that none of the jottings in the pocket-book apply to any of the four letters produced; at the same time, it is unlucky that no others have been preserved, the rather that Mrs Glas has, in some measure, connected the credibility of her testimony with the receipt of a letter from La Marr.

THE evidence of Menager and Garnier, I cannot disbelieve, in so far as they prove the existence of Lewis Pierre Delamarre, a surgeon, first in the Hotel Dieu, afterwards practising in a low sphere, who was not at Liege, or in the army, though Sir John says he knew him there, nor in Italy, where the letter produced bears him to have been: That he also delivered women who were desirous from necessity to conceal their offspring; and, in that train of business, may
probably

probably have delivered both strangers and women of fashion; or, at least, that he was disposed to boast that he had done it, in order to raise his reputation, and promote his business. In all these facts, Menager and Garnier are supported by the testimonies of Mr Giles, and other witnesses, who I don't observe subject to any degree of suspicion. But it is remarkable, that these two witnesses alone concur in the circumstance of *twins*, which is the only one that applies the evidence effectually to support the defender's plea; and that, without it, the other facts may be easily supposed true, though La Marr had not delivered Lady Jane Douglas. I am unwilling to suppose, that this circumstance was wilfully adjoined by these witnesses; but at the distance of time, it may be conceived they may have talked themselves or been reasoned into a belief of a single word said by La Marre to them, which makes their evidence of so much more consequence in this cause. And, on this point, I cannot help being somewhat affected by a circumstance much insisted upon, on behalf of the defender, viz. that there seems some reason to think, that even Mr Giles, when first brought to speak on that subject extrajudicially,

extrajudicially, seems to have been led by the interrogatories to make an answer which made the person who took it down in writing think that La Marre had mentioned twins to him. But when he came to be examined, in a solemn judicial manner, and was aware of the consequence of his being certain of La Marr's having mentioned twins, he denies it, or even that he had said so. From Giles's character, I cannot discredit his evidence upon oath, nor avoid giving it the preference, in so far as it must be contrasted, either with Menager or Garnier, or with a report, tho' in writing, by a third party of what he said *extrajudicially*. With this I must join, that it is clear from the proof, La Marre had been turned out of the Hotel Dieu, at the instance of this same man Mr Giles, long before Lady Jane's arrival at Paris; and it is not easy to believe, that, after Mr Giles was advanced to a higher station in the house, he would be frequenting the collations in the *chambre de gardes* of the young surgeons of inferior rank, especially when La Marre was of the party, as he had particular reason to disclaim his conversation, and the company he kept there, while in the house. I think there is also some reason to believe, that Me-

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nager was himself with the army, at the period assigned for Lady Jane's delivery. So that Menager's, so far as it relates to La Marre's account of a delivery, must refer to a different delivery at an earlier period. All which leaves me unsatisfied with the evidence with respect to Louis Pierre Delamarre.

It is next material to consider the evidence with respect to Madame le Brun, her house and family; which to me is not more satisfactory than that concerning La Marr.

ABSTRACTING from the evidence of Sir John and Mrs Hewit, any evidence we have of a Madame le Brun, tends to make her a sick nurse employed by Louis Pierre Delamarre, with whom she and her daughter seem to have been particularly connected, and to have met generally at the Hotel Dieu, while he was attendant there. The credibility then of this branch of the evidence seems to be subject to most of the objections that are urged against what is said by Menager with respect to Louis Pierre Delamarre; with this addition, that allowing it to be free of these objections, it does not appear that she had such a house as could accommodate the company, or, as Sir John and Mrs Hewit say, Lady Jane was

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delivered

delivered in ; nor is there any other evidence that she was delivered in her house.

I must therefore conclude, upon the whole evidence on this point, that it does not at all afford me satisfying proof that Lady Jane was delivered by Pierre la Marr, or in the house of Madame le Brun.

WITH the defect of evidence on the part of the defender, I find myself obliged to join the evidence on the part of the pursuers, That Sir John, Lady Jane, and Mrs Hewit, were at Godefroy's inn at the time assigned for the delivery at Le Brun's. I cannot help being deeply affected by the evidence of Godefroy and his wife, supported by evidence arising from their books, which is not, in my opinion, removed by the objections stated on the part of the defender. At first sight I was much moved with the irregular appearance of these books; but the more I have attended to them, with the objections and answers, I have been the more inclined to think they support the oath of Godefroy and his wife, and prove Sir John and Lady Jane to have been at their house till the 14th of July inclusive.

I must admit, that from the nature of this evidence, and the whole circumstances taken together, it does not exclude a mere possibility

ity that the fact may have been otherways : But, as in every part of human life, we are obliged to act upon probabilities, and seldom or never can command real certainty; so in our duty as judges and jurymen, we must proceed upon the most probable evidence, and cannot reject it upon a mere possibility of the fact being otherways. And this argument appears to me to be unanswerable, if the interest of Sir John and Lady Jane were only at stake; as the cloud which now hangs over and obscures our eyes might have been prevented or withdrawn by them; how far it is equally applicable against the defender, I shall afterwards have occasion to examine. And, if it is so, the pursuers must be allowed to avail themselves of the circumstances proved upon their part, that there were two children carried off from their parents, at such time, and under such circumstances, as suit most surprisingly with the appearance of the defender and his brother, with Sir John and Lady Jane.

I do not think this part of the pursuers evidence altogether free of exceptions; nor do I think it sufficient to bring these enlevements directly to Sir John Stewart and Lady Jane, but, from the joint evidence of the whole, I

think it proved, that the two children were taken under such circumstances, and at such times, as might apply to and fill up these very blanks in the defender's evidence with facts which support the pursuers plea, if the identity of the persons had been fixed, which was a thing next to impossible as the scene lies, and little less than a miracle could have brought it about. One observation I must beg leave to add on the part of the defender's evidence, and shall be happy to stand convicted, if I am wrong; it is Mrs Hewit's letters to the two maids from Paris, which fell to have been wrote frankly and simply, without any degree of affectation, or more than a narrative of the most material facts; yet many of the material facts are omitted, such as would have contributed to give light to the cause, and they seem to *be crouded* with a great variety of less material, though very probable circumstances, several of which appear from other parts of the proof not to be founded in truth: This weakens the credibility of the whole, as it shows invention was at work.

IN fine, upon a general view of the whole facts brought in evidence, it does not appear to me, that there is any proof of Lady Jane's delivery;

delivery; but, on the contrary, a strong presumptive evidence, that she was not, and could not be delivered at the time, in the place, or by the person condescended on by Sir John and Mrs Hewit; in which event the service cannot be supported.

THE great doubt that has occurred to me in forming this opinion, arises from what I have already mentioned, *viz.* that, though the evidence may be sufficient to affect the interest of Sir John or Lady Jane, who must have had it in their power to have removed the weight of many of the objections to the defender's plea, if such objections are not founded in truth, and as they themselves have given rise to all the darkness that now hangs over this cause, by a most unaccountable conduct, and took no effectual measures to remedy this misconduct, when the consequences began to appear, and were represented to them by others; whether the force of this evidence, or rather the defects of it, should have the same weight against the defender, who is a third party, blameless of all the guilt or misconduct that can be alleged against Sir John or Lady Jane, and as much at a loss to discover the truth or the evidence of it as the pursuers, and at the same time, in possession of a state by his filiation and
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the acknowledgement of parents, which the action tends to deprive him of, and as the evidence does admit of a possibility of his being Lady Jane's son; whether or not he is intitled to avail himself of that to secure him in the possession of his estate, and the consequences.

BUT, *1mo*, If a possibility only had been founded on at the service, it surely would not have procured a verdict of the inquest in his favour, independent of habit and repute. *2do*, Habit and repute in this case appear from the proof not to have been uniform or uninterrupted, so as to give a full possession of a state which was controverted even by the Duke of Douglas to the last period of his life. And, *3tio*, It can only arise in this case from the acknowledgement of the parents, attended with all the circumstances now brought out in evidence, which taken together do not allow it to have the full effect attributed in ordinary cases, where a public and regular marriage, open cohabitation, and acknowledgement of man and wife, residence in the midst of relations and those who are supposed to attend to what passes in the family, and may have an interest to discover any falsehood: A pregnancy and a delivery under such circumstances

stances, under the hands of known and ordinary operators, where nothing wrong has been suspected or alledged at the time, every thing must be presumed and held to be right in all time coming, till the contrary be made evidently appear. In such a case, habit and repete, and the acknowledgement of parents must have full weight; the peace and security of society depend upon it.

BUT I am afraid the principle will not apply to this case, and that the interest of the defender cannot be distinguished from that of Lady Jane and Sir John; on that footing, if his plea hangs only on the credibility of their acknowledgement of him, it must be affected by whatever impeaches their credit, or destroys the belief of the innocency of their conduct.

THE defender insisted much, that there were no motives for Lady Jane and Sir John's committing this crime; that, on the contrary, they had rather motives not to commit it. And, *2dly*, That Lady Jane's affections and constant attention to the children appeared in the strongest manner from her letters.

With respect to the motives, these can only be guessed at, even when the characters and dispositions of the parties are known. It is almost

most impossible that motives can be proved. The characters of mankind are extremely difficult to be known: They are very seldom agreed upon, but are different with different people.

HOWEVER, frugality or foresight don't appear, either in the characters of Sir John or Lady Jane; otherways the engaging with a family and a lady of quality, whom Sir John must have known did not live within her own income, was as improper for himself, and for her too, as the taking the additional burden of two children.

AGAIN, with respect to Lady Jane Douglas, her being cruelly plunged at once into the complicated distress, arising from their joint situation, appears to have been the cause of her death.

WE must not therefore expect proper motives of conduct from persons of all characters.

THERE are unaccountable things in most characters, and it is impossible to assign proper motives for every action. For instance, in a postscript to one of Lady Jane's letters to Sir John, she inquires, if he had got Mrs Hewit's spectacles set in silver, although it appears from the letter itself, that they were
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at that time in want of money. This, tho' a trifling incident, serves to shew how difficult it is to assign motives for an action.

As to Lady Jane's letters, so full of affection and attention to the children, I do not think it is difficult to account for them: They were suitable to her ordinary character: She was surely under an obligation to provide for those whom she had taken from their parents, and who had no other but her to depend upon: She must have been under a strong sense of the situation she had brought them into, and duty concurred with humanity to make her treat the defender as her son, though he truly was not so.

I am strongly impressed with that humanity, that would make every feeling heart desire to find evidence that the defender was her son; therefore it is with the greatest regret that I must conclude, that I cannot find that evidence; but must give my opinion for sustaining the reasons of reduction.

LORD ALEMOORE.

AFTER all the pains I have bestowed upon this cause, I have no difficulty to give my opinion in conformity with that last given, and in conformity with that first of all given from the chair. As to the opinions yesterday delivered upon the other side of the question, the regard they deserve made me again examine the grounds of that opinion I am now to give; and, after viewing their arguments in all their force, I found my sentiments rather confirmed than shaken: Yet, in forming this opinion, I confess I met with some difficulty arising from the art and ingenuity of the defender's counsel. They at first puzzled me; in one page, setting out with a supposition; in the next, swelling it to a probability; in the third, establishing it as a demonstration. But I cannot approve of them, when I see them treating too superciliously every argument produced on the part of the pursuers; and, instead of attacking the whole of the pursuers proof as a long circum-

cumstantiate train of evidence, of which every link hangs upon another, centering in one point, they have endeavoured to shake the force of this combined evidence, by taking every circumstance separately; and after attempting to shew, that not any of them singly amounted to a conclusive proof, they finish every separate attack with an exclamation: " Yet " this is the strength of the pursuers cause."

BUT it is not in this manner the evidence is to be taken to pieces; it is the great lines and their combinations by which we are to judge; and however much I was startled by the ingenuity of the defender's counsel, yet as often as I took in view the connected chain of evidence, as often did I return to the opinion I am now to deliver.

SOME points of law have been attempted to be brought into this cause; but to little purpose. This is not a cause which falls to be decided upon subtle points of law; it is a jury-cause; a fact to be proved or disproved, of which every person as well as a lawyer, all who now hear me, all who can attend to the proofs, are equally capable of judging, and will judge of those that judge it.

GREAT weight has been laid upon the defender's service, and the possession he attained

ed in consequence of it. I do not arraign the verdict of that jury that served him heir. They judged upon the evidence that was then before them; and, had I been one of them, I should probably have been of their opinion.

THE defender has reapt all the advantages of that service: He obtained his charter and seisin; he got into possession of this great estate; by which, and by the assistance of a generous Lady, he has been enabled to employ every mean of defence. I am glad he got possession of the estate; for I should have been very uneasy under the necessity of judging in this important and complicated cause, had not the defender contended upon equal terms of affluence with his competitors.

BUT what can that service avail now in the present circumstances, when the immediate tendency of this action is to bring it under your Lordships review, in order to its being reduced, and set aside, if contradicted, or not sufficiently supported by the whole evidence now before us? When the decrees of inferior courts are brought under reduction before this court, the decisions of the inferior judges are of no weight in themselves; your Lordships determine in them as if they were original actions. The same thing holds in the reduction
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of services, with this difference only, that in regard the proceedings in services are generally had without contradiction, and are founded upon the slightest proofs, they are, of all inferior decrees, the most easily reduced. Services were, in former times, brought under reduction before what was called a grand jury, consisting of forty-five jurors. These grand juries have, for a long time, been laid aside; and this court came in place of the grand jury, and must proceed upon the same principles with all other juries. A service may be challenged, either upon the insufficiency of the proof originally brought, or upon new proof brought before the court, in order to invalidate and set aside the former proof. In all such cases, your Lordships are in use to determine upon the fact, upon a complex view of the whole evidence, relying upon your own judgment, without paying any deference to the opinion of the former jury, who may have proceeded upon evidence incomplete, partial, or corrupted. And thus lately, in the case of Tullyallan, your Lordships reduced a service upon new proofs brought before this court, which you found to be more pregnant than the proof which
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had been brought in the service; and therefore set aside the service.

No small weight has likewise been laid upon the defender's filiation, or the acknowledgement of his parents of him as their son, and it has been said, that such acknowledgement is all that any of us have for our birthright. I shall admit the force of this argument to its just extent. It is a presumption in favour of the child so acknowledged. But all lawyers have agreed, that it is no more than a presumption, liable to be set aside by contrary proofs, or even by stronger presumptions. And I must be allowed to observe, that the acknowledgement of our parents is not the only thing we have to support our birthright. There is generally a strong concomitant circumstance goes along with it, which gives complete force to the acknowledgement; that is, a proper and well founded habit and repute, an uniform acknowledgement, not only by parents, but by the relations of the family, their connections, and the uncontradicted voice of the neighbourhood and country. This defender indeed has the acknowledgement of his parents; but he is destitute of that general fame, that uncontradicted opinion of his country, which gives the due force and effect to such acknowledgement.

knowledge. It is evident from the proof, that the suspicions of his birth were coeval with the accounts of it. I shall not here state the proof at large upon this point; but shall only touch upon such circumstances, which, as proceeding from the defender's first and best friends, must appear most satisfactory.

UPON Lady Jane Douglas's death, this defender, when an infant, and left destitute by all his relations, was most generously and charitably taken under the protection of Lady Schaw, who indeed acted the part of a mother to him. But was Lady Schaw, notwithstanding her generosity to the defender, free from suspicions as to his birth? No: She never could banish from her mind the doubts and scruples which had naturally arisen in the breasts of many upon this event: She desires her grandchild, Mrs Napier, to converse with Sir John Stewart, and procure from him what information she could get, *that they might unravel this dark story.* Mrs Napier accordingly applies to Sir John. He, at first seemed to have adopted Lady Jane's plan, of avoiding all explanation of particulars, and pretended, that he was an old man, had gone through many adventures and misfortunes,

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and had changed so many houses, that he could not say in what house Lady Jane had been delivered; but, when hard pressed, he was at length prevailed upon to give a note in writing of the particulars; and this seems to have been the very first time that he gave any particular account of that transaction. But did he then mention the house of Madame le Brun as the place of delivery? No, he asserted positively, that it was in the house of Michell.

UPON obtaining this note from Sir John, Lady Schaw desired Mrs Napier to write to France to inquire into the truth of Sir John's story. She accordingly wrote to Lady Frances Stewart to desire Sir James Stewart to inquire into the particulars; at the same time, begging Lady Frances not to talk too much of attempting this proof, *lest a failure of success should make things less clear than they are.* Does this show a conviction in Lady Schaw or Mrs Napier of the truth of the defender's birth? Is it not rather a demonstration, that they entertained doubts and suspicions of the whole story?

How does Sir James Stewart express himself upon this occasion? He writes to Principal Gordon at Paris, and sends him Sir John's

John's note as *a clue to unravel the dark story of the birth of Lady Jane Douglas's children*. Principal Gordon makes the researches, finds out the house of Michell, and writes back, that he had got no satisfaction; and that his inquiries rather contradicted Sir James Stewart's information.

DOES NOT Lord Cathcart, the grandson of Lady Schaw, depose, "That he believed the doubts which had been entertained of the reality of Lady Jane's delivery proceeded from the *mystery and concealment which attended it.*"

IN what case did ever such suspicions attend a real birth?

THE filiation therefore of the defector in this case, can amount to no more than a surmise or presumption of the slightest kind, and cannot obstruct us in the least from giving due attention to the full circumstantial evidence, consisting of all the facts and circumstances which may have any connection with this affair. It is my duty then as a judge, to weigh the whole evidence on either side, and to form my opinion according as the one or other scale of evidence shall preponderate.

In this view, I shall endeavour briefly to
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state the foundation and principal circumstances on which my opinion is formed.

I shall not follow Lady Jane in the course of her journey through Holland and Germany, but shall take her up at Rheims, and consider the transactions from that period in the most favourable light for the defender, that is, from the accounts given by Sir John Stewart and Mrs Hewit; and I cannot help thinking, that the story told is so suspicious, and so hard to be reconciled with the common sense and experience of mankind, that it is sufficient of itself to disprove the reality of Lady Jane's delivery at Paris, even without the aid of the proof brought by the pursuers. But when to the incredibility of that tale shall be added, the connected chain of circumstantial evidence brought by the pursuers, totally subversive of it, I can no longer hesitate, but must yield to the conviction that the whole was an imposture.

LADY JANE, after having assumed the appearance of pregnancy at Aix-la-Chappelle, Liege, and other places, (this pregnancy I shall take particular notice of afterwards), at last arrives, in the eighth month of her pregnancy, at Rheims, one of the most populous towns of France, where there is an university, and
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many skilful accoucheurs and mid-wives. There could scarcely be a place more proper than this for Lady Jane's waiting the expected event, where she had an opportunity of getting the ablest assistance, besides the company and attention of several of her countrymen there, to whom she daily appeared, and had made herself very acceptable: Notwithstanding of these advantages, Lady Jane, after loitering away a whole month at Rheims, at last, when the critical period was to have been very near, sets out for Paris in the common *diligence*, attended only by Sir John Stewart and Mrs Hewit, leaving behind her the two servant maids, whom she could not be a moment without from the time of her leaving Britain till then.

Is it possible to give any satisfactory reasons for such strange proceedings, or to reconcile them with common prudence and attention? But, as in every other imposture, so in this, a tale must be told, and motives must be assigned to satisfy the curiosity of inquirers. It has been pretended, that Lady Jane left Rheims, because she had been informed, in a strange manner, by a Lady who came to her the morning after she arrived there, that there was no proper assistance to be had in
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that place; and that she herself had suffered in child-bed upon that account: And the reason assigned for Lady Jane's not taking her maids with her was, that they had not, at that time, money to defray their expences.

THE futility of these pretensions must appear at first sight: Who can believe there was not able assistance to be had at Rheims? The greatness of the place, as well as the proofs before us, demonstrate the contrary. The Lady who has been pretended to have given the terrifying advice, could, from the circumstances, be no other than Mrs Andrieux; and yet it is in proof, that though that Lady had had many children, she had never suffered in child-bed.

As to leaving the maids behind for want of money: What mighty sum, pray, would it have cost to have carried these maids in the *diligence* to Paris? No more than ten or twelve shillings; and the expence of keeping them in family at Paris must have been less than that of boarding them at Rheims.

BUT this excuse of want of money is not only insufficient in itself, but clearly proved to be false; for Sir John Stewart had then in his pocket a good bill for about two thousand
livres,

livres, which he could have taken money for either at Rheims or at Paris, and which he actually received payment of a few days after his arrival at Paris.

THE motives alledged for Lady Jane's leaving Rheims having been shewn to have been false and affected; one must naturally suspect that some design or fraud was here carrying on, which must be concealed from the public eye: Every circumstance contradicts a real pregnancy and expectation of delivery; every circumstance coincides with a pretended one.

HAD Lady Jane been really pregnant of a child of so many hopes and expectations, it is impossible that she, or any woman of common prudence, or even instinct, could have acted in the manner she did. Had Rheims been the place of her destination, she would not have left it, without any necessity, just upon the eve of her delivery. Was Paris the place intended where to deposite her precious burden? Would she have wantonly loitered at Rheims for more than a month, and till within a very few days of her time, and then, in these critical moments, undertaken a journey of three days to Paris of the most imminent hazard to herself and the child,

in a common jolting carriage, exposed to the view and to the caprices of a variety of unknown fellow-passengers, confined to hours and stages, and, what is of all most astonishing, unattended by these maids, who, during her whole three years residence abroad, except at this particular juncture, appeared to have been so necessary to her as to have been in a manner part of herself?

ON the other hand, if a pretended birth was in view, a long residence at the place where the scene of delivery was to be laid was dangerous, and might have exposed her to the knowledge and inquiries of her countrymen, or even to be marked and attended to by strangers: Therefore it was not proper to go to Paris till within a few days of the delivery; neither had she any thing to fear from the inconveniencies of a long journey in a stage-machine: And as secrecy and concealment were essential, the attendance of her maids must, upon this particular occasion, have been troublesome and dangerous. Mrs Hewit, her old confident, was alone sufficient to carry on and bear witness of this scene of delivery.

IN this unaccountable manner does Lady Jane leave Rheims; and on the 2d of July,
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upon the eve of her delivery, set out for Paris, for a three days journey, in a common *voiture*, with a variety of unknown passengers, and without any person of experience to assist her, in case of these accidents which might naturally be suspected. These passengers all noted Lady Jane, but could not recollect the smallest appearance of pregnancy in her during that long journey. Upon the 4th of July, Lady Jane, Sir John Stewart, and Mrs Hewit arrive at Paris, and put up at the Hotel de Chalons kept by Monsieur Godefroy, a man of character and agent for the city of Rheims, to whom they carried a letter of recommendation from Mr Maillefer syndic at Rheims.

LET us now take a view of their transactions at Paris, still stating them in the light most favourable to the defender, from the evidence of Sir John Stewart and Mrs Hewit. They staid in Monsieur Godefroy's till the 8th of July; they then removed to the house of Madame le Brun, where, upon the 10th of July, Lady Jane was delivered of two boys by the assistance of Pierre la Marr, a Walloon surgeon, and in presence of Madame le Brun, her daughter, and the maid of the house; that
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the eldest was a fine healthy boy ; but as Lady Jane did not chuse to bespeak a nurse, lest she should not have a living child, he was unlucky in his nurses, having, in a few days, had four or five of them, (for by the inconsistent accounts given by Sir John and Mrs Hewit, it is not easy to say how many he had) : That Sholto the youngest boy was extremely weak, and not expected to live ; for which reason, after being *ondoyed* by Pierre la Marr, he was relinquished to his care to be sent to the country, or where he pleased ; who accordingly sent him off three or four leagues from Paris : That Lady Jane had a surprizing recovery, in-somuch, that Le Brun's house being infested with bugs, she was, in 8 or 10 days, so well as to be removed from Le Brun's to the Hotel d' Anjou kept by Madame Michell : That she did not carry the eldest boy to Michell's with them, but went next day, and brought him with his nurse, to whose care they had intrusted him for two or three days upon account of their removing from Le Brun's : That at Michell's, this nurse likewise was found to be without milk ; whereupon Madame Michell got Madame la Favre to nurse the boy, who kept him till he was carried from Dammartin : That Lady Jane staid in Michell's till the end of July ;

but

but was so tender and delicate, that she never stirred abroad : That she then went to Dam-martin, a village about 7 leagues from Paris, for better air, till the 14th August, when Sir John, Lady Jane, and Mrs Hewit returned to Rheims, carrying the eldest boy with them, but leaving the second, who continued so weak, that they durst not transport him : That during all this stay in and about Paris, neither Lady Jane nor Sir John saw any of their countrymen, several of whom were then in Paris, not even Mrs Hewit's relation Mr Johnstone, who had been their fellow-travel-ler and constant companion in Holland, and then resided at Paris : That Lady Jane never, or but once, saw Pierre la Marr before he brought her to bed, and but once after that : That Lady Jane never saw Sholto all the time she was about Paris, nor till she returned thither in November 1749.

Such is the history of this great event given by Sir John Stewart and Mrs Hewit ; and it is believed, the like of it will not be found amongst the annals of mankind. Let us take a view of this story. Sir John Stewart applies to Mr Maillefer, a man of consequence at Rheims, for his letter of recommendation to Mr Godefroy at Paris. What would have

been the natural purport of this application, had the pregnancy been so palpable at Rheims, as has been pretended, or had a real delivery been expected at Paris? Why certainly, that, as Lady Jane was going to Paris in order to procure the best assistance in her delivery, Mr Godefroy and his wife would be as serviceable to her as possible on that important occasion. How inconsistent with this is Mr Maillefer's letter produced by Mr Godefroy? It bears no more, than that, as Sir John and Lady Jane were to lodge at his hotel, and proposed to make some *purchases* at Paris, Mr Godefroy and his wife would give them their assistance in such purchases. Thus was Lady Jane's situation concealed, not only from Mr Maillefer, but likewise from Mr and Mrs Godefroy, who, notwithstanding the several days residence of Lady Jane in their house, never had the smallest idea of her being with child. No inquiries made from them, as to accoucheurs, nurses, or proper accommodation for Lady Jane's delivery; though it is plain, from their own story, that they had no opportunity of getting any information in these particulars from other hands. Can any thing be more extraordinary?

IN this situation, they pretend they left Godefroy's upon the 8th of July, and went to Madame le Brun's, where Lady Jane was delivered on the 10th, and where they staid till the 18th or 19th, when they removed to Madame Michell's. Here comes the critical period of this extraordinary history. This is the scene, where your Lordships, and all mankind will expect, nay, demand the clearest light, and most satisfying evidence. The nature of the thing will make you expect it: The importance of the event will make you demand it. Of all the incidents in the lives of the three actors, none could be so interesting, none could be so full of circumstances capable of making the deepest impression, and which must have been rivetted on their memories till their latest breath. In such a case, who will not expect a ready and satisfactory answer to these simple questions? Where is the house of Le Brun? What was the landlady? What is become of her and her daughter? Who was the famous accoucheur of Paris, who delivered Lady Jane, and for whose assistance she undertook so perilous a journey from Rheims to Paris? What were the names of the various nurses the eldest

deft boy had before he went to Michell's? Whither was the poor weak boy Sholto carried the moment he was born? How amazing then muft it be, that, in none of thefe particulars, can your Lordships, through this voluminous proof, receive the leaft fatisfaction; and that, inftead of the funfhine which was expected to enlighten this fcene, nothing but darknefs refts upon it! Madame le Brun, her houfe, her daughter, her maid, all have efaped the moft painful refearches of both parties, affifted by the accurate police-books of the city of Paris. All is vanifhed like an incantment in a romance. The fact is, no fuch houfe ever exifted, where Lady Jane could be delivered, which is the only poffible reafon that can be given why Lady Jane, who has been traced in every place where fhe refided, during her three years travels abroad, has here left no track behind.

As to the accoucheur, it is agreed, no accoucheur of any character or reputation was ever thought of on this occafion. In what a ridiculous light does this fingle circumftance put Lady Jane's pretence of hurrying to Paris to get the ableft affiftance? But who was the accoucheur? for one of fome fort or other

ther was necessary to fill up the drama. Why Pierre la Marr, says Sir John Stewart; Pierre la Marr, says Mrs Hewit. What was this Pierre la Marr, and whence came he? "I know nothing of the matter," says Mrs Hewit. "I never saw him till he came to deliver Lady Jane. Sir John Stewart bespoke him." But, says Sir John, "I will tell you who this Pierre la Marr was. In the year 1721, I was made acquainted with him at Liege, by one Colonel Fontaine, who told me La Marr was a Walloon, and surgeon to a regiment lying at Liege, and that he dealt a little in midwifery. This La Marr I never since saw or heard of till at this time I met him one day by accident walking in the Thuilleries; and immediately it recurred to me, that this old acquaintance would be a very proper hand to deliver Lady Jane." Well, where did La Marr lodge in Paris? he would certainly give you a direction. "No: He would not let me know: That he could not do it safely, as he only came occasionally to Paris upon an *affaire epineuse*; but that I might meet him every day walking in the Thuilleries, or the Luxembourg." But what if Lady Jane had been seized in the night-time? how could you

you have got La Marr? “O! in that case, I must have called another.” But how did you get La Marr, when Lady Jane was taken ill? “He happened to call that morning, and finding her out of order, he remained till she was delivered.” This is the account given of the accoucheur, and of the delivery of Lady Jane Douglas; and the only account of it that can be admitted to the end of time; because it is judicially given by the only person that could know any thing of the matter, and by the person whom the defender must call his father.

THE whole of this tale of Lady Jane’s delivery is so absurd and incredible, that it would be losing time to review the several circumstances of it in detail. I desire no more than that any man, who can for a moment divest himself of prejudice and prepossession, will recollect this story, and say, if he can conceive motives or circumstances which could compel Lady Jane to submit to such a scene of danger, distress, and misery, as if she had been abandoned by mankind, or cast upon a desert coast. Did not, in this conjuncture, her age, her expectations, every consideration that was dear to her, call upon
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her to take all the aid and all the comforts which her condition required? There was nothing to prevent her from enjoying every possible conveniency: She had no occasion for concealment, after her appearances of pregnancy had been published in so many places: Money she did not want: Friends she had abundance of in Paris. Besides, in what court of Europe could Lady Jane Douglas, in such circumstances, have been destitute, not only of resources, but of the noblest support? Who then can believe that Lady Jane was here occupied about a real delivery? It is impossible to give credit to it: As for myself, who can boast of no inspiration, nor pretend to any supernatural lights, but must judge by the common feelings of humanity, I must conclude, that this birth had not the least foundation in truth; that it is all a fiction and an imposture.

I shall now follow Lady Jane to the house of Michell, where she emerged from her obscurity, and where her conduct was exposed to the sight, and is proved by all the people in that house. Sir John, Lady Jane, and Mrs. Hewitt came there upon the 16th or 17th of July, no more than eight or nine days after her delivery; for this weighty reason, that

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Le Brun's was infested with bugs, but without any child or nurse. They went away next day to fetch the child, and returned with him and his nurse; the child having been for two or three days intrusted out of their sight to the care of the nurse.

THUS we see Lady Jane abandon her youngest boy the minute he came into the world, in a weak dying condition, to the charge of, God knows whom, this notable Pierre la Marr; and her eldest boy soon thereafter sent away from her for some days under the care of his nurse. And for what reason? Because they were to remove to the house of Michell, as if it was so difficult a matter to remove a child and his cradle with themselves, who had so little other baggage. And what was this nurse they put such confidence in? The most low, poor, miserable wretch that can be figured, without milk, without cloaths, and branded with the King's mark as a thief. What tender-hearted mother will say, that these were the real children of Lady Jane Douglas?

THERE is little occasion to take further notice of Lady Jane during her stay at Michell's and afterwards at Dammartin, except as to that assertion of Sir John and Mrs. Hewit.

Hewit, that Lady Jane, who recovered so surprisingly as to be able in eight days to remove from Le Brun's to Michell's, continued so tender and delicate at Michell's that she never stirred out while there. This is flatly contradicted by several persons in Michell's house, who depose to Lady Jane's having one day made a tour through the squares of Paris; and to her having gone another day as far as Versailles, walked in the gardens there, and returned to Paris. I should be willing to let this pass for a mistake, were not I soon to discover a reason for the assertion.

I come now to a circumstance, which has from the first made a deep impression upon my mind, and I am afraid cannot easily be effaced. The conduct of Sir John, Lady Jane, and Mrs Hewit, with respect to the youngest boy: We have seen him given up from his mother's womb to La Marr to be sent to the country. Let us for once suppose his weakly condition might have required this sacrifice; but how is it possible to account for the behaviour of Lady Jane, whose affection to these children has been so much boasted of, to this poor forlorn infant, after he was disposed of, or rather exposed, in such a manner. He was given up to La Marr, whom they did

not know where to find or inquire after. La Marr again sent him to some nurse in the country; but who she was and where they lived, they knew not. And what is of all most amazing, neither did Lady Jane, Sir John, or Mrs Hewit go to see or inquire after this child during all their stay at Paris and Dammartin: So that Lady Jane returned to Rheims, without ever casting her eyes upon this poor child, whose weak and deplorable condition would have redoubled the affection of any mother. I here appeal to the feelings of nature and humanity, if any mother could behave so to her own child? It is impossible that Lady Jane Douglas could have been such a monster. And there is but one possible way of accounting for her indifference, which is, that she had then no child to see.

It was to palliate this conduct of Lady Jane that Mrs Hewit deposed, that Lady Jane was not able to go abroad whilst she staid at Michell's: But the clear proof of her expedition to Versailles, and her survey of Paris, confute this assertion; and above all, her journey to Dammartin shews her ability to have paid a visit to her child, if she had one.

I shall just mention one or two circumstances more in the conduct of Lady Jane, which appear irreconcilable with a real delivery.

It is proved and admitted, that, from the 10th of July, the day of the birth, to the 22d of that month, there were no letters wrote, nor any notification given to any person whatever of the great event of the delivery. This was the most important juncture in Lady Jane's life, and in a manner the crisis of her fortune. The first sentiments of the heart would have been to proclaim it to all her friends and all her acquaintance. How is it possible then to give a reason for concealing this wonderful turn of, good fortune for twelve days? This could not possibly have happened in the case of a real delivery. Upon the 22d of July indeed, there are no less than six letters wrote to different persons imparting the glad tidings. But there is a strange fatality in the defender's cause, that scarce a circumstance of it appears without some blots of suspicion. Who would not expect that all these letters would be dated from Paris? yet, strange to tell, they are every one of them dated from Rheims, and calculated to make the world believe, that Lady Jane was delivered

vered at Rheims. And they had that effect. In a plain honest transaction, what could be the use or the intention of such dark mysterious proceedings?

OF a piece with the former is the concealed manner in which Sir John and Lady Jane lived at Paris. They did not discover themselves to any of their countrymen there, though some of them were of their most intimate acquaintance. This proceeding was so contrary to their natural dispositions, and to their practice in all the other places of their travels, that it cannot fail to raise suspicions of their designs at that period.

THUS I have taken a review of Lady Jane's transactions from her arrival at Rheims in May, and during her residence at Paris, and till her return to Rheims about the middle of August 1748, as they have been set forth by the most unexceptionable witnesses for the defender, Sir John Stewart and Mrs Hewit, and I must acknowledge, that the story, even as told by them, can, by the common rules of judging of evidence, gain no credit from me. I have tried every circumstance; but every circumstance is full of suspicion. The ground is every where so hollow and un-

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found, that I cannot find a place whereon to rest a foot. So that, upon the defender's own plea, I should have little hesitation to give judgment against him.

BUT, when to this is added the positive proofs brought by the pursuers, conviction becomes compleat. The first of these I shall mention, is, the evidence arising from the household-books of Godefroy, supported by the clear and positive testimonies of Godefroy and his wife. It is an agreed point, that Sir John, Lady Jane, and Mrs Hewit, arrived at Godefroy's upon the 4th of July. Accordingly, we find in Godefroy's household-book, an article inserted of that date, which can be applied only to Sir John and these two ladies. This account is regularly and daily continued from the 4th to the 13th of July inclusive: Whence it is clear, that this company must have remained constantly in Godefroy's house till the 14th of July. This book being written evidence, honestly and fairly made out when the transactions happened, can be liable to no suspicion, and cannot lie. And, in confirmation of the book, we have the positive evidence of Godefroy and his wife, deposing to their remembrance of Sir John and the two ladies, to the accu-

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racy of his books, and to many other corroborating circumstances.

THIS pointed and positive evidence at once contradicts and destroys the tale told by Sir John and Mrs Hewit, of their removal from Godefroy's to Le Brun's upon the 8th of July, and of Lady Jane's delivery there upon the 10th. It has been before observed, how suspicious that story was in itself, and that no such house as Le Brun's could be investigated. Here we have a direct proof of its falsehood. Lady Jane was not at Le Brun's upon the 10th of July; she then resided at Godefroy's; and as it is certain there was no delivery, nor appearance, nor hint of it at Godefroy's, the consequence is unavoidable, that Lady Jane could not possibly be delivered upon the 10th of July; which at once unhinges the whole story of the birth.

THE defender's counsel have done great honour to this weighty evidence of Godefroy's books, and plainly discovered the pressure they felt from it, by exerting all their ingenuity in cavilling at the depositions of Godefroy and his wife, and in attempting to discover mistakes and inaccuracies in their books. But, notwithstanding all their efforts, the testimonies of Godefroy and his wife,
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supported by their books, and their books supported by their testimonies, must remain a piece of evidence too solid to be destroyed or shaken by the flimsy attacks of over-nice and unsatisfactory criticism. The characters of Godefroy and his wife have always been fair and unimpeached. Why then are they to be suspected of falsehood? And the household-book, upon which the defender's counsel made a separate and distinct attack, did, by the accurate investigation which that attack provoked the pursuers to make, shine out in a light more satisfactory and more authentic than could at first have been expected. What solid reason then can be given for withholding credit from the evidence of Godefroy and his books; especially, as they establish facts which are not contradicted by any contrary evidence? Had the defender brought any probable evidence that Lady Jane removed from Godefroy's upon the 8th of July, and had been delivered in Le Brun's upon the 10th, there might have been room for canvassing and weighing the opposing evidence. But, when no such contradictory proof is brought, and where there is no trace of a Le Brun's where Lady Jane could be delivered, Why should I refuse my assent to the evidence

vidence of Godefroy ? Here I have, for obvious reasons, thrown aside the story told by Sir John and Mrs Hewit. It is a period wherein they ought naturally to have been supported by the strongest collateral evidence ; and yet, in this period, they are destitute of all aid and assistance, and rest solely upon their *ipse dixit*. To those who can be satisfied with that sort of evidence, this must indeed appear a clear cause for the defender.

THERE still remains a period of four or five days from the 14th of July, when they left Godefroy's, till the 18th or 19th, when they came to reside at Michell's, wherein Lady Jane has not been traced. It is evident, however, from the nature of the thing, that in that short space, she could not have had a delivery, and have been so well recovered as she appeared to be when she came to Michell's. What was the occupation of Sir John and Lady Jane during this dark period, must be extracted from the nature of the thing, and from the proof. Every fact and circumstance has showed the impossibility of a real delivery ; and therefore that supposition must be laid out of the question. Let us next try how far the circumstances of this period will correspond with an imposture, and a plan of
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introducing supposititious children. In this view it was impossible that Lady Jane could think of removing from Godefroy's, where there was no appearance of either pregnancy or delivery, directly to Michell's, where she assumed the character of a Lady just recovered from child-bed, and the mother of a child some weeks old. This would have hazarded a direct and immediate detection. Some time, therefore, behoved to intervene, and some dark and secret place must be fallen upon to baffle all inquiries, before she could venture to appear in Michell's in the condition she did.

It has been asked, How Lady Jane could, in this short time, pick up the child that she brought to Michell's? I should not think myself bound to give a positive answer to this question; because it is enough to me, that I am satisfied the child was not the child of Lady Jane. But even here the proof has not left us in the dark; for it clearly points out, not only that a child might have been procured in that time, but that a child, every way corresponding to the child of Lady Jane, actually was picked up in that very period. I will not trouble your Lordships with a minute intelligibility of the proofs re-

lating to the enlevement of Mignon's child. It is clear beyond dispute, that at this very time, the infant son of Mignon, of three weeks old, was, under fair pretences, carried off from his parents by a gentleman and a lady, foreigners; the gentleman, by the description of the witnesses, not a little resembling Sir John Stewart. Here then is proved the possibility of a child's being picked up in the time when Sir John and Lady Jane were in hiding; not to say the probability of this being the very child which Lady Jane put upon the world as her own.

How like to a child picked up in this manner was the child which Lady Jane brought to Michell's? It had the appearance of a child three weeks old, and was attended by a drab hastily picked off the streets, to serve a sudden emergency, who acted the part of a nurse, but without that essential requisite, milk in her breasts. Mrs Hewit, indeed, has attempted to excuse this extraordinary appearance of the nurse, by saying, that Lady Jane would not bespeak a nurse before her delivery, lest she should have a dead child; and that the child was at first unlucky in his nurses. But this is too thin a disguise. What mother was ever sure she was to bring forth a
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living child? and yet, What mother ever neglected to provide a nurse? Besides, if Lady Jane was not certain of bringing forth a living child, Why did she provide child-bed linen at Rheims, and yet neglect to provide a nurse at Paris? These things do not agree. And surely, it was a hard fate, if in ten days, they could not find out a better nurse for the child than that one who first made her appearance at Michell's. Madame Michell, in an hour's time, found out Madame Favre, an excellent nurse.

THE enlevement of Mignon's child leads one to pursue the history of Sholto, the second son. I have already taken notice of Lady Jane's neglect, or rather desertion of him, from the moment of his birth, when he was given over to La Marr in a dying condition. As she returned to Rheims without seeing or inquiring after him; so she continued at Rheims above a year longer without getting any intelligence of him; for, all the pretended correspondence with La Marr about him is clearly disproved by the palpable forgery and falsehood of these letters from La Marr. It is impossible to persuade any one endowed with the smallest share of the common sentiments of humanity, that Lady Jane could thus abandon her real offspring. How the cause is

last to get possession of a second boy, may be gathered from her second remarkable journey to Paris in November 1749, and from the incidents of that period as they appear in evidence.

IN November 1749, the three confederates, Sir John, Lady Jane, and Mrs Hewit, give out, that they were to go to Paris to bring home Sholto. There was no hazard in this avowal. For, if they found a boy proper for their purpose, it was well. If not, the death of Sholto, an event for which all their friends were prepared, by the constant representation they gave of his weak puny condition, would have made every thing easy. They got the use of Mr Rutledge's carriage to perform this journey. But in this expedition, as in the former, every thing must be dark, mysterious, and concealed. Their coachman must not know where they put up in Paris; that might be a mean of tracing them. Therefore they stopt at an inn, without the barrier of Paris, left their carriage there, with an injunction to the coachman, to wait till they should return and take him up; and they went into town in a hackney-coach. Here they remained for eight or nine days; and having got their child,

child, as they say; but whether from La Marr or the nurse, Sir John and Mrs Hewit are not at one; they, without seeing or inquiring after any of their acquaintance, take up their carriage where they left it, and return to Rheims exulting in their success. Such is their story. But how is it supported? Just in the same manner, and not a whit better, than the great event of the delivery at Le Brun's. Nothing but their own assertion. When one desires the satisfaction of some collateral circumstances, and inquires what part of Paris, what hotel did they put up at? or what fort, and how many were the people in the house? he meets with the same negative answer as formerly: They know nothing at all of the matter. Every thing of that kind has escaped their memory.

Will not all this mystery and intention to shut out the light, naturally incline one to cast his eyes on some other transactions of this period that have been discovered? Who can abstain from reflecting upon the enlèvement of Sanry's child, which is proved to have happened just about the time of this journey to Paris? The persons who carried off this child, were a gentleman and two ladies, foreigners, as in the case of Mignon. They in-

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quired for a young male-child; and after viewing several, at last made choice of a boy 18 months old, and of a delicate make. The diversity of size and strength of children at that age, would easily make such a child pass for one of 16 months, and thus coincide with the delivery in July 1748. They got possession of the child by charitable pretences, but carried him off next day, without the knowledge of his parents; and he was never more heard of.

The coincidence of these two enlevements with the history of Lady Jane's two sons, the one an infant of three weeks old, carried off in July 1748, the other a boy of eighteen months, carried off in November 1749, and the rarity of such accidents at Paris; (for, by the defender's attempt to prove the contrary, it is manifest, that no such enlevements had happened at Paris for many years before and since that time); must appear very extraordinary, not to say miraculous, even to those who are inclined to give credit to Sir John and Mrs Hewit's account. But what effect must it have upon those who see so many other grounds of suspicion?

The last piece of positive evidence upon the part of the pursuers which I shall take notice

notice of, is the forged letters from La Marr: These letters were indeed first produced in the service as evidence for the defender. They were found in Lady Jane's strong box after her death, and acknowledged by Sir John. But, upon the palpable discovery that was made of their falsehood and forgery, the defender saw it was full time to desert them. This very circumstance brings them over to the other side as a part of the positive evidence of the pursuers. For surely nothing can tend more to the detection of an imposture, than to show, that the supports upon which it chiefly depended, are false and fabricated. It is impossible to palliate so clear a proof of deceit under the gentle name of a *mis faim*. I detest all fraud as impious and wicked: nor can I easily be convinced of the truth and honesty of a cause where such impositions become necessary to its gaining credit.

Thus have I stated the circumstances upon which I have chiefly fixed my opinion. It would be improper for me to encroach further upon your time, by taking particular notice of all the arguments that have been urged for the defender. I shall beg leave just to touch a few of them.

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MUCH have I heard of the Louis Pierre De-lamarre, whom the defender would now set up as the accoucheur of Lady Jane, in opposition to the Pier la Marr, so strongly asserted, and so particularly described by Sir John Stewart; and that upon no better authority than the story told by Menager, a person of no name or reputation. The incredibility and inconclusiveness of that evidence has already been pointed out from the chair. One thing is manifest, that Menager's account is a direct pointed contradiction of all the circumstantial history given by Sir John Stewart of his Pier la Marr. I cannot help deploring the hard fate of the defender, who is reduced to the cruel dilemma of taking refuge under such an evidence as that of Menager, at the expence of declaring to the world, that his father, in this material circumstance of his own birth, deserves no faith or credit. This is a desperate situation indeed!

I did not expect to hear so much weight laid upon the pregnancy of Lady Jane. It has been pushed so far, as to be held a conclusive evidence of the delivery. I will not enter upon the proofs of this pregnancy, nor dispute, that Lady Jane appeared to many
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as a woman in that condition; only I must observe, that in this, as in all other parts of their evidence, Mrs Hewit and Isobel Walker have shot beyond the mark; and by swearing, that Lady Jane was so extremely bulky and unweildy, have exposed themselves to be contradicted by all the other observers.

How easy was it, and how little artifice did it require in Lady Jane, after she had declared her marriage, and after the significant whispering of her maids to every body they met, to persuade those that saw her in foreign parts, that she was with child. They could have no suspicions; especially, as she was always taken, by her looks, to be ten years younger than she really was. But I must reject the consequence that has been drawn from these appearances. It is said, that, as the pregnancy is proved, the delivery must be presumed as a necessary consequence. I cannot assent to this. Had the proposition been inverted, and if it could have been said, that the delivery had been proved, therefore an antecedent pregnancy must be presumed, I could have understood it. And indeed, had they proved a delivery, I would have supposed the pregnancy without evidence. But the other argument I think a false one; be-

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cause those skilled in the profession of physic have declared, that all the symptoms of pregnancy are fallible, and that there is no other criterion of a real pregnancy, but a subsequent delivery. Where is that proof of a pregnancy in this case? Besides, does not common experience, history, and our law-books, inform us, how easy and how frequent the simulation of pregnancy has been? As a real delivery is ever ushered in by a preceeding pregnancy, so a feigned delivery must acquire credit from a simulated pregnancy. Fiction must always hide itself under natural appearances. In the several instances laid before us of the crime of *suppositio partus*, the appearance of pregnancy was still assumed to give credit to the delivery. And who will suppose, that Lady Jane was less acute than the ladies of high rank who have trode before her in the same path?

TERRORS have been hung out, and imaginary dangers to the state and birthright of the people, have been painted as resulting from the pursuers success in this cause. But these are merely the offspring of fancy and invention. It is morally impossible, that, in a true honest birth, such a total want of unsuspected positive evidence to support the birth
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should coincide with so many proofs and circumstances to contradict it, as occurs in the cause before us. Innocence, therefore, has nothing to fear. The guilty indeed may be alarmed. But it is for that purpose, that crimes are investigated and punished.

THE affection which Lady Jane so remarkably displayed towards these children, after her return to Britain, has been made a topic of declamation. But, for my part, I cannot discover what other conduct she could consistently have held, supposing the children were fictitious. I can easily account for this shew of affection, whether it is considered as natural or artificial. On the one hand, she had absolutely and irrecoverably deprived these children of the tender care and support of their real parents, and must have been conscious, that, by her unjustifiable act, they became totally dependent upon her. And, as under her eye, they would begin to list the tender words of pappà and mamma, and would touch her heart with all the tender endearments and affection of true children, Lady Jane must have been devoid of all generous and tender feelings, had not a reciprocal affection been kindled in her breast towards these poor innocents. Daily experience

rience discovers equal degrees of parental affection stirred up in the hearts of nurses, and of such as have had the care and tuition of the children of others from their early years. I should not much wonder, therefore, if Lady Jane's love of these children had been genuine and unaffected. On the other hand, if she did not really feel these emotions which were so natural, her behaviour must, in every respect, have been the same as if she had felt them. This, after the steps she had taken, became not a matter of choice, but of necessity; having once declared to the world, that these were her children, there were *vestigia nulla retrorsum*; she behoved to carry on the disguise whatever it might cost. She could not remit her attention in any one article, without an evident risk of detection, of infamy to herself while alive, and of reproach to her memory after death. All this, Lady Jane was too wise not to foresee, and too able not to act her part to perfection.

THE characters of Lady Jane and Sir John have been much insisted on. Their characters! But they are both dead. They have been joined together as equal in this respect, and I shall not separate them. No body who
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knew them intimately, can be at any loss to pay the regard due to this circumstance.

I cannot conclude, notwithstanding all I have said, without testifying the warmth of my feeling for the young gentleman the defender. He is brought into a most unhappy situation, not from any fault of his own, but by the folly and imprudence of others. I rejoice at the good fortune he has had in the patronage of some eminent and worthy persons. I hope, whatever may be the event of this cause, his merit will secure these, and increase their number. But such tender sentiments must have no effect with me in the character in which I now speak. In duty to myself, to justice, and to my country, I must give my judgment according to the dictates of my heart; and I am of opinion, that the reasons for setting aside the service of the defender are founded in law, and sufficiently proved.

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MY sentiments in this cause so perfectly coincide with those of my brother who has just now given his opinion, that I might well excuse myself from saying any thing more, than barely to declare my assent to the conclusion, by giving my vote for sustaining the reasons of reduction. But as this cause is of great importance to the parties concerned, and has excited the attention of the public in an uncommon degree, I think it incumbent upon me to give the reasons of the opinion I have formed, upon the most attentive consideration of the proof I was capable of. I do not however, think it necessary to take up the time of the court with entering minutely into the proof; but shall confine myself to such particulars as appear to me to be the most material, and which chiefly induce me to be of opinion for the pursuers.

THE question in issue is not a point of law, but a fact, *viz.* Is the defender the son of Lady Jane Douglas, or, is he not? This fact is

is matter of proof; and it is upon the proof of it now before us that we are to determine. It requires little skill in law to judge in this cause: Any man of understanding and of an unprejudiced mind, is capable of giving as just a decision as the most experienced lawyer. Had this proof now before us been adduced at the service of the defender, the jury then impannelled must have decided upon it. We now, in the reduction of the service, are to determine as the great jury of the nation.

It is scarce necessary to say any thing upon the question, *cui incumbit probatio?* for, as it was incumbent on the pursuers to prove their condescendence, a proof was also necessary on the part of the defender. He might indeed have rested his plea upon the proof brought in the service; at the same time, he was at liberty to bring further proof in support of his claim. Accordingly, a proof has been adduced by both parties, the import of which falls now to be considered.

It is admitted, that the acknowledgement of parents, and even *habit and repute* are not *probatis probata*; they are only *præsumptiones juris*, not *juris et de jure*. They may be redargued by contrary evidence.

As this is the first thing that occurs in considering the proof, I must beg leave to say a few words upon what I take to be the import and meaning of *habit and repute*, in questions of filiation. As to the acknowledgment of the parents, and what effect it may have in the present question, that will fall to be taken notice of afterwards, when we come to consider the accounts given by them of the defender's birth.

IN common cases, where a proof of filiation or propinquity is necessary, as it is on the brieve of mortancestry, parole-evidence of *habit and repute* is accounted sufficient; and justly so; for it may be, and sometimes is, the only proof that can be brought. But then, What do the witnesses depose to? It is to public notoriety, to universal, uncontradicted, and common fame. If there is no public notoriety of the claimant's birth, no *communis et consentiens fama*, there can be no proof of *habit and repute*. I have said, that in common cases, a proof of *habit and repute* is justly deemed sufficient; for, when a birth happens in a family, it is not concealed and made a secret of; on the contrary, it is immediately notified to the relations and friends of the parents; the child is presented to and acknowledged

ledged by them; and upon their testimony and public observation *habit and repute* is founded. But when a child is produced to the world, of whose birth there is no public notoriety, where there is no *communis et consentiens fama*, there can be no proof of *habit and repute*. If a question of filiation arises in such a case, it must depend entirely upon the truth or falsehood of the account given by the supposed parents, or by those who produce the child, how it is to be decided. The acknowledgement of the parents is not of itself sufficient; for, as by their refusal to own a child really theirs, they cannot deprive him of his birth-right, neither can a false acknowledgement confer a right where there is none by birth.

THE agents for the defender seem to have been sensible of this; for at his service they did not, as in common cases, rest their proof upon *habit and repute*, but brought a variety of other evidence, both parole and written, to support his claim.

THE defender was produced to the world by Sir John Stewart and Lady Jane Douglas as their son; but, as he is acknowledged to have been born under such circumstances, that no friend, no relation, no acquaintance, indeed,

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that no person whatever, so far as can be discovered, (Mrs Hewit only excepted), was privy to, or had access to know any thing of the birth, there could be no notoriety, no *communis et consentiens fama*: His filiation depends entirely upon the accounts given by his supposed parents.

SEVERAL witnesses indeed have deposed, that the defender was *habit and repute* the son of Lady Jane Douglas; and that they, the witnesses, believed him to be so. But it is evident, that their testimonies rest entirely upon the accounts given by Sir John and Lady Jane. On the other side, it is in proof by many credible witnesses, that the defender was not universally acknowledged to be the son of Lady Jane Douglas: That, so far from there being a *communis et consentiens fama* of the truth of his birth, there were doubts and suspicions entertained concerning it, which were almost coeval with himself: That these doubts and suspicions were early imparted to Sir John and Lady Jane; and in particular, there is clear evidence, that the Duke of Douglas, till upon the eve of his death, never acknowledged the defender as his sister's son; nor did he ever admit him into his presence.

In considering this cause, therefore, I think that *habit and repute* is out of the question; the defender was not possessed of such *habit and repute* as could support his filiation, without farther evidence.

A variety of proof has accordingly been brought by the defender, in order to show, *1mo*, That lady Jane Douglas, though in the fiftieth year of her age, was capable of having children; *2do*, That she was actually pregnant previous to the time assigned for her delivery; and, *3tio*, That she was actually delivered of the defender and his twin-brother upon the 10th day of July 1748.

As to the first of these articles, I shall say very little; as, indeed, I can hardly think it a matter of proof. Though it be not impossible, that a woman at the age of fifty may bear a child; yet, in the common course of nature, it is very unusual, consequently highly improbable: And I cannot assent to the proposition, that if she was capable of having children; *ergo*, why not have them? *A posse ad esse non valet consequentia*. At any rate, the extreme rarity of such an event happening would naturally put a woman, who found herself in those circumstances, upon her guard, and induce her to behave

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in such a manner as to obviate every possibility of a doubt; whereas, in this case, the behaviour of Lady Jane was quite the reverse, full of mystery and concealment.

GREAT weight has been laid upon the second article of the defender's proof, that Lady Jane was pregnant previous to the time assigned for her delivery; from which it is inferred, that she must either have born a child or miscarried, which last is not pretended to have happened.

SEVERAL witnesses have deposed, that Lady Jane had to them the appearance of being with child; and that they believed her to be so. Mrs Walker and Mrs Hewit, in particular, have sworn pointedly to this; the one has said, that, in the seventh month, she was so unwieldy that she could not go to bed without assistance; and that she never saw a woman with child bigger: The other says, that Lady Jane, in the eighth month, was so remarkably big, that every body thought her with twins. That this description must be highly exaggerated, is evident from the accounts given by other witnesses, who had occasion to see Lady Jane at the time, and expressly depose, they took no notice of her pregnancy, till they were told of it. The

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two landladies where she lodged, Madame Scholl, and Madame Gillefen, likewise Lady Wigton, are of this number; at the same time, all the witnesses agree as to the very unusual dress which Lady Jane constantly wore, even in her room.

If the inference made by the defender necessarily followed from this proof of pregnancy, there could be nothing more to say; he must prevail. But, in my opinion, the consequence does not necessarily follow: If a woman has born a child, there must have been an antecedent pregnancy; but before the truth of the converse of this proposition can be admitted, it is absolutely necessary to maintain, that every appearance of pregnancy, or what a witness takes to be so, is real, and that the person who has such appearance is truly with child. That, I believe, will not be said; even where there is no deceit, a woman may have every appearance, nay, most of the symptoms usually attending a real pregnancy, and yet not be with child. It is well known, that many, even the most experienced persons, have been deceived in this respect. The amount therefore of all this proof of Lady Jane's pregnancy, is no more than the opinion of the witnesses, who only depose

depote to appearances, which, whether real or affected, they had no access to know. As to the evidence of Mrs Hewit and Mrs Walker, I own I can give no credit to their testimony in this matter, as it will appear, in considering the rest of the proof, that they deserve none in any other article.

As, therefore, the whole of this proof of Lady Jane's pregnancy (suppose even Mrs Hewit and Mrs Walker to be credible witnesses) amounts to no more than opinion ; when the conduct and behaviour of Lady Jane is considered, there can remain little doubt, indeed, 'here remains none with me, that there was no real pregnancy in the case. Her conduct and behaviour were utterly inconsistent with her being actually with child. In February 1748, when she must have been far advanced in the fifth month, she had not the appearance of being with child ; so far from that, she then denied her marriage to Lady Katherine Wemyss, and complained of the report as an injury ; and Lady Katherine, who had access to see and converse with her every day, believed her. If we look into Mrs Walker's oath, where she depotes to the conversation she had with Mrs Tewis, prior to this period, Lady Jane must

must have known, that she was then with child; and, if these conversations were true, it is incredible, that Lady Jane could have behaved in the manner she did to Lady Katherine Wemyss.

In the month of April, when the marriage was made known to the Duke of Douglas, and that it was likely to prove fruitful, What was Lady Jane's conduct then? She is said to have been sickly and ailing, when she found herself to be with child. Did she consult with any physician, surgeon, or midwife? Were any preparations made for her delivery? For Mrs Lewis indeed, who seems to have been consulted by Lady Jane's confidence, is advised to send her to the country, on an application to the Duke of Douglas for the use of the country, and to the neighbourhood, where it was thought she might lie in more commodiously than at Aix-la-Chapelle. But, instead of waiting for his answer, they leave Aix-la-Chapelle in an abrupt manner, and set out on a long and tedious journey. Is this a conduct that any woman in the eighth month of her pregnancy would have had? Lady Jane, if she did not chuse to lie in at Aix-la-Chapelle, had the offer of the castle of Edinburgh, where she could be well accommodated,

modated, and where she could be visited by her friends and acquaintance. If she was to move, therefore, to any other place, it was natural to think she would come to Britain. At any rate, as we have it from herself, that her view in marrying was to give an heir to the noble family of Douglas, she ought not to have retired to a corner to be delivered. She knew, that she did not stand on good terms with her brother, and that every imprudent step she could take might be interpreted to her disadvantage. But every consideration, both of convenience, safety, and prudence, is neglected; and a journey to Rheims undertaken. The reasons given for this are, the expence of Aix, on account of the congress, and that there was no proper help to be had there. Neither of which reasons are true; for there were several skilfull persons to be had there; and, if Aix was become more expensive (though the landlady swears she did not raise the rent of her lodgings on account of the congress, which was begun long before this period), she might have lain in at Bedbur at no expence; besides, the journey was an unnecessary expence, more than the addition of staying at Aix could be. As for the reasons gi-

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ven by Lady Jane to her friends here in Britain, that she intended to go to Geneva or Switzerland on account of religion, and for cheapness; these are affected indeed, and seem calculated to make them believe she was taken short at Rheims contrary to expectation. I cannot help here observing, that the zeal Lady Jane expresses for the protestant religion has an odd appearance, when contrasted with the other parts of her conduct, both while at Aix-la-Chapelle, and at Rheims.

WHAT happened on the journey is of little moment, tho' there are several inconsistencies in the account given of it; and the story told by Mrs Walker of Lady Jane's illness, and being likely to miscarry at Rhetel, I think disproved by the oath of the gentleman who travelled with them from Charleville.

It is in proof that they arrived at Rheims on the sixth or seventh june; they stay there near a month most unnecessarily, if they intended to proceed further. And, upon the 14 of July, when within eight days of her delivery, does Lady Jane Douglas set out in the stage-coach for Paris, Sir John and Mrs Hewitt in company, leaving the two maids at Rheims. Lady Jane, when in health, had kept two maids to attend about her person;

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she had carried them with her in all her journeys at a considerable expence; yet now, when their attendance was more necessary than ever, at a time when every woman wishes to have some known females about her, this lady, who, according to Mrs Hewit and Mrs Walker's evidence, was so big, that she could hardly stir, and could not so much as go to bed without assistance, after sitting up all night, walks on foot at two o'clock in the morning to the stage-coach, and goes to Paris without any servant or attendant.

WHEN I consider the whole of this behaviour of Lady Jane, it appears to me not only inconsistent with, and contradictory to the idea of her being pregnant, but strongly indicates a deceit and a concealment of what she was going about. No person of common understanding, and Lady Jane did not want that, could have behaved in this manner, had there been a real pregnancy; but it is just such conduct as might be expected, if unfair things were meant.

THIS conduct, however, is endeavoured to be accounted for. The reason given for leaving Rheims is, that, two or three days after their arrival there, Lady Jane, in a conversation with Mrs Andrieux, about what assistance

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she could have in the place, was told by her that they were ignorant as brutes in that respect; “and that she, Mrs Andrieux, had had “one child, in the birth whereof, by their un- “skilfulness, she had contracted a disease, which “had rendered her incapable of having more “children.” Mrs Hewit depones, She was present at the conversation, and says, “That she “has been informed that Mrs Andrieux did die “of that disease.” Hesel Walker swears to the same, and says, she had it from Madame Andrieux, after Lady Jane’s departure for Paris. Is this account in itself credible? It certainly does not agree with what Lady Jane told to the Countess of Stair. But, had the story been true, why stay for near a month after at Rheims? But the whole is proved to be false. There could have been proper assistance got at Rheims; and the story of Madame Andrieux is disproved by the oath of her son. But if it was proper to leave Rheims, why not take the maids along with them to attend Lady Jane? The reason for not doing so is said to be want of money. Sir John, Mrs Hewit, and Hesel Walker concur in this, that they were reduced to a single louis when they arrived at Paris. Had this been really the case, as they must have expected to get money at Paris, it was no reason

reason for leaving the maids; the louis d'or would have done more than defray the expence of their passage, and their maintenance at Paris, where their help would be wanted, would have cost little more than it did at Rheims. But this story of want of money is also a falsehood: It is in proof, that Sir John had then in his pocket a letter of credit on Paris for near 2000 livres, which he could have taken up at Rheims, had he pleased. In fact, he received it at Paris two days after his arrival there. But, to make the story go the better down, another falsehood is added, That they expected money on coming to Paris; but being disappointed, Sir John applied to a banker for an advance upon Lady Jane's pension, that would become due at Lammas; but being refused, he was obliged to write to Mr Andrieux for a credit for L. 30, which he sent him: That the money was paid *upon the very day Lady Jane was brought to bed*; and then, as all was over, it was needless to send for the maids. This is a very pointed story, solemnly declared by Sir John, and sworn to by Mrs Hewit and Mrs Walker. They all agree in the circumstance of the time of payment, and give that as the reason why the maids were not sent for. Isobel Walker swears, that Mrs Hewit wrote her this at the time; yet it is a falsehood,

falsehood, and a falsehood which must have consisted with their knowledge. Isobel Walker swears to a conversation she had with Madame Andrieux on the subject, which is inconsistent with Mrs Hewit's letter she says she received; it is impossible to account for this by a *non memini*. We have here three persons swearing pointedly to a fact which is not true. From the manner in which they tell the story, it seems to have been meant as a circumstance to support the account given of the birth. The letter of credit was not sent from Rheims by Mr Andrieux till the 24th, and the money was paid at Paris on the 26th July.

From the whole, I conclude, that it is not only not probable that Lady Jane was pregnant, but likewise her conduct renders it incredible. What faith can be given to witnesses who, whenever they come to depose to facts which can be disproved, are found to have sworn to falsehoods, and which it must have consisted with their knowledge were such?

As therefore habit and repute is out of the question in this case, and the proof brought of Lady Jane's pregnancy is not sufficient (to say no more of it) to establish

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bliss the defender's birth, his filiation must depend upon what happened at Paris, where Lady Jane arrived on the 4th July 1748, and is said to have been delivered of twins upon the 10th of that month.—Let us examine how that matter stands.

As there are no persons known who could give any account of this delivery, but Lady Jane herself, Sir John, and Mrs Hewit, recourse must be had to them for it; and they all three concur in placing it upon the 10th of July.

LADY JANE was dead before this process was brought; but it does not appear that ever she, even in her lifetime, though often spoke to on the subject, entered into particulars with any body; she contented herself with general declarations; even within a few days of her death, when talked to by Mrs Greig, who waited upon her, of the propriety of having some evidence of the defender's birth, she rested upon this, *that if any body doubted of the birth, they must disprove it.* It is in proof, that the doubts and suspicions entertained of the birth of the defender, were early known to Lady Jane, and she had suffered much on that account: It was easy for her to have procured authentic certificates of her delivery,

ry, if real: She was called upon to do so by every tie that could influence a parent; yet she never endeavoured to procure such certificates; even upon death-bed she leaves her child to defend his birth upon a point of law. Does this convey the idea of affection to her children? Would any mother have behaved in that manner? Is such conduct consistent with human nature?

The reason commonly given by Lady Jane for this her conduct was, that it was doubting her honour. If her honour was doubted, it was incumbent upon her to clear it; and it was easy for her to do so, had her delivery been real.

Yet we see, that Lady Jane and Sir John were not quite so easy and unconcerned on this head as they pretended to be: We see them, in the year 1750, very anxious to procure evidence that might be of use to their children. They write to Madame Tewis, desiring certificates of Lady Jane's pregnancy when at Aix-la-Chapelle, which they got; but which never made their appearance till the process.

It appears also, that they were at much pains to disprove a letter said to have been wrote by Count Douglas to the Duke of Douglas, though such letter never existed. When
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Grindlay, their landlord at London, represented the propriety of getting certificates of the birth, Lady Jane's answer was, *She had not money to go or send to France for them.* These certificates, if they could have been had at all, might have been procured with as little trouble, and at as little expence, as was bestowed upon disproving the letter of Count Douglas. In short, Lady Jane seems never to have given any person she conversed with satisfaction on this subject.

IN all her letters, she observes the same conduct; she always keeps to generals. She contents herself with saying, she was delivered on the 10th July 1748. But neither place nor witnesses, nay, not even the town, is mentioned; insomuch that their most intimate acquaintances, to whom the account of her delivery was recently communicated, did not know the birth was at Paris. Sir William Stuart, and Mr Johnstone, though both at Paris at the time, believed, till long after, that it had been at Rheims. In her letter to the Duke of Douglas she keeps in the same generals; she mentions the date without any more, and her letter is dated from Rheims, though wrote from Dammartin. The people at Rheims alone knew the scene of action

was at Paris; from them it could not be concealed. But no person there was interested to make any particular inquiries. It is remarkable, that even in her pocket-book, where many very immaterial events and trifling particulars are carefully entered, the birth of her children, the most interesting incident of her life, is set down in the same general terms. "Archibald and Sholto were born 15th July 1743," without one word of addition.

Mrs Hewitt, in her accounts of Lady Jane's delivery, appears to have been as general. In her letter to the maids of the 22d July, she mentions indeed a *Doffe*, but names him not, but no other person, no house or street where they lodged, no landlady is present. Mrs Walker says, that, upon asking Mrs Hewitt the name of the street near their return to Rheims, she could not tell, as not understanding French. In her own service, she remembered the name of the nurse-midwife was Frenching the child, but the name of the landlady she could not remember; but, on her second examination, Le Baron and Michelle being named by the Lord President, she then could not only recollect, but describe them exactly. But it is not

markable, that in the seroll or copy of the letter to the Duke of Douglas which was found after her death, and is of her own hand-writing, and which is wrote of purpose to vindicate Lady Jane's character, and to convince him of the reality of her delivery, she tells his Grace, that Lady Jane was delivered in Michell's, and that she was ready to swear to it. At the service Mrs Hewit deposed, that after the 10th day they were obliged to carry Lady Jane to other lodgings on account of bugs. In her letter to the maids of the 22d July, when she could not be mistaken, she writes, that Lady Jane could not be kept in bed after the ninth day, by reason of the violent heat; but does not mention any change of lodgings. And, in her letter to Mr Harper, which was wrote upon perusal of the service, she says, they changed lodgings after the sixth day. This is a strange correction; and yet, she is very positive in it, though it contradicts her letter to the maids. In this letter too, she mentions Le Brun's twice, though, on her second examination, some months afterwards, she could not recollect any French name. Had there been only one true tale to be told, such different accounts could not have been given.

SIR JOHN'S accounts of the birth, in all his letters, and in his conversation, so far as appears, were of a piece with those given by Lady Jane and Mrs Hewit. The day is mentioned, 10th July 1748, but not a word more; no house, no street, no witnesses, no accoucheur, no, not so much as the town. On the contrary, his letters, though wrote at Paris, are all dated from Rheims. The first time it appears that he ever mentioned any particulars was, when pushed by Mrs Napier in the year 1756; I say pushed, for he seems to have been unwilling to enter into particulars. Then it was he gave her the note in which the house, witnesses, and accoucheur are named. But what house? Michell's! The use Mrs Napier made of this note; and the result of the inquiries made in consequence, appear from her oath, and from the letters of Lady Frances Stewart, and principal Gordon. They gave no satisfaction; there had been no delivery at Michell's. In Mrs Napier's second conversation with Sir John, (which I think is plain from her oath, and from the other circumstances which are in proof, must have been after she had received Lady Frances Stewart's letter), instead of Michell's, he substituted Le Brun's, as the house where Lady

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dy Jane was delivered. And this is the first time that the name of Le Brun seems ever to have been mentioned. It is to be found in no pocket-book, in no letter; no witness that has been examined says, that ever the name of Le Brun was heard of before this period. And here I must observe, that, in my opinion, the note exhibited by Mr Charles Brown could not be among those got from Mr Orr. Thus did Sir John vary his tale very essentially in the space of a few months, in the very way Mrs Hewit did; for I think it appears, from the letter itself, wrote by Mrs Hewit to the Duke of Douglas, that it must have been wrote about the time of Mrs Napier's inquiries; for it plainly alludes to Stockbrigs, and mentions him as dead. He died in July 1755.

The next account given by Sir John, is in his judicial declaration. It was solemnly emitted, in presence of your Lordships. He was not hurried or teized in any shape; he was desired to give, and did give, deliberate answers to every question; he was desired to recollect himself, and to amend any thing in which he might suspect he was mistaken; and, in fact, he did, upon recollection, make several amendments. In that declaration, he gives

gives a circumstantial account of the delivery, of the several changes of lodgings, of the witnesses present at the birth, viz. Madame le Brun, and her daughter; and particularly, gives the history of Pierre la Marr, the accoucheur, of his correspondence with him while he had the child Shoko under his care, and of the letters produced at the service, said to be from La Marr.

The account given by Sir John of this La Marr is pretty singular. He was, it seems, an old acquaintance, whom Sir John had known at Liege in 1721; he was a Walloon, had been surgeon to a regiment, and was a skillful accoucheur. This man Sir John, who, as he has said, was so anxious to have the best help for Lady Jane at her lying in, that he made a journey from Rhénans to Paris in order to bespeak an accoucheur, before he would carry her thither; this man, Pierre la Marr, did Sir John meet by accident; and recollecting that he was a skillful accoucheur, engaged him to bring Lady Jane to bed. Upon which he returned to Rhénans, and carried Lady Jane to Paris. How came this man to be at Paris? Was he at Rhénans there as an accoucheur? No: He was at Paris *for some other purpose*. Where did he reside in Paris?

He refused to tell his lodgings, because he was there *sur une affaire epineuse*. Where was he to be found, when he should be wanted? He was to be found at particular hours in certain walks of the Thuilleries, or the Luxembourg. Did Lady Jane ever see him before she was delivered? Yes, says Sir John, I introduced him to her after our arrival. Did Mrs Hewit see him at that time? I cannot say; probably she might, as she was always with Lady Jane. Suppose Lady Jane had been taken ill in the night, How was La Marr to be found? in that case, I must have called another. In what manner was he called to Lady Jane? She was taken ill in the forenoon of the 10th July; La Marr happened to call by accident that morning, and so brought her to bed. What says Mrs Hewit to all this? Had she any conversation with Lady Jane about the accoucheur before the delivery? No: Did she ever see La Marr? Never till he came to bring Lady Jane to bed. How came he then to attend? Upon Lady Jane's being taken ill, Sir John went out at ten o'clock, and brought him with him.

THIS story is very circumstantial, very pointed. But is it probable? is it credible? I cannot believe it; because it cannot be true.

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It is founded upon a manifest falsehood, a falsehood that is admitted, *viz.* upon the story of Sir John's journey from Rheims to Paris to be-
speak an accoucheur. He made no such journey; he staid at Rheims till the 2d July, when they all set out for Paris together. Indeed, such journey would have been absurd, as it is well known, a skilfull accoucheur can be procured at Paris at any time, and upon the shorrest notice.

This and many other particulars in Sir John's declaration are endeavoured to be accounted for by a *non memini*. Sir John, it is said, was old and infirm, his memory failed, no wonder then he should mistake at such a distance of time. But failure of memory cannot apologize for Sir John. It is possible that the particular circumstances attending a fact, or even the fact itself, may be forgot; but want of memory will not make one tell a story that never happened, and recount a fable; that must proceed from another cause. But, was Sir John's memory failed? It did not appear upon his examination that it was. He was indeed somewhat deaf; and for that reason, the several questions were given him in writing, one by one, that he might consider them, and give a deliberate answer; which,

which, as I said before, he did do, without hurry or confusion. Besides, it appears from the two letters he wrote soon after this period, the one to Mr Maillefer at Rheims, the other to Mr Clinton, that his memory was good, indeed singularly so; he even recollects Madame Guy, the latter's wife who executed their commissions at Paris. His calling for La Marr's letters the day after which he had been interrogated upon them, and correcting what he had formerly said, with regard to which of them were originals and which copies; his fixing upon the letter of 1752 as genuine, and being positive, that it was of La Marr's hand-writing, is a very good proof of his attention to what he was about. Can it be supposed, that Sir John Stewart, who was so much interested in the question, who had been twice interrogated by Mrs Napier upon the subject, who, when the Ducheſs of Douglas had desired an account of the matter from him, had wrote her accordingly, who was present at the defender's service, and probably was consulted with about it, and who was in habits with, and in use to visit Mrs Hewit; can it be supposed, is it credible, that his memory could be so much failed as to forget the most capital

capital circumstances of so very interesting and, at the same time, so simple a fact, as the delivery of his wife and the birth of his children? To make up for the defect, he has forged a story in support of it. His letter to the Duchess of Douglas shows, that he had no true account to give: He contents himself with appealing to persons, and desiring her to make inquiries, which never could remove the suspicions. Lady Jane's pregnancy at Aix-la-Chapelle is what he insists upon; and he goes so far as to name Lord Blantyre as a witness, though, it is certain, that his Lordship had not seen Lady Jane from July 1747 till September 1748.

BUT the journey to Paris and the story of La Marr is not the only falshood in Sir John's declaration. The letters said to be from La Marr are another, and of a deeper dye; they are a downright forgery: Truth can only be told one way, and requires neither falshood nor forgery for its support.

It was urged in the pleadings for the defender, that supposing Sir John to have been guilty of falshood, and supposing La Marr's letters to be forged by Sir John, the defender could not thereby be affected; he could not for any crime of Sir John be forfeited

of his birth-right. But the learned counsel did not advert, that the only foundation of the defender's claim is the acknowledgement of his parents, and the account they have given of his birth. Sir John avers that the defender is his son, and that he was born in such and such circumstances; that averment is founded upon falsehood, and endeavoured to be supported by forgery. The consequence is evident.

SIR JOHN, Mrs Hewit, Mrs Walker, all concur in saying, that La Marr corresponded with Sir John by letters; that while they were at Rheims, he wrote regularly once or or twice a-week; and yet, of all the letters thus wrote, not one has made its appearance; in place of the whole, we have got four fabricated ones. Another remarkable circumstance attending these forged letters is, that they were in Lady Jane's custody at her death; they were found in her trunk, left with George Lindefay, and produced by him upon oath at the service. She therefore must have known of the forgery: What convinces me of this is Lady Jane's conversation with Mrs Menzies, when she told her she had proof of the birth of her children, by letters from

from the physician, in her pocket. This conversation happened some little time before Lady Jane went to Douglas. Join to this Lady Jane's letter to the Duke from Douglas mill, in which she has this remarkable expression, *That if he would see her but for a few moments, if she did not convince him of her innocence, she would suffer any punishment.* What did she mean? How could she convince him in a few moments? She must therefore have had evidence to produce. By Grindlay's oath and other evidence, it is plain, she had no attestations or certificates of the birth of her children. She told Mrs Menzies she had letters from the physician; these forged letters are found in her custody. These must therefore have been the evidence she intended to shew to the Duke. What tends to confirm this is the account given by Mrs Walker of the letter received by Sir John from La Marr in 1752. Sir John says, this letter was in answer to one he had wrote La Marr, desiring him to give an account of the birth of the children. Mr Walker deposes, she heard it read, but knows not how, or by whom it was delivered. But Mrs Hepburn deposes, that, in a conversation with Mrs Walker, in the sitting-room

before they were called in to be examined at the service, Mrs Walker told her, that she herself delivered the letter to Sir John : That he read it, said it was a letter from La Marr ; and “damned him ; and said, What ! was he proving to him that he had brought Lady Jane to bed ? and threw the letter in the fire : That Lady Jane immediately snatched it out, wiped it, and put it in her pocket ; said to Sir John, why was he angry at the man ? the letter might be of use some time.”

I shall not take notice of the other circumstances attending Lady Jane’s delivery, as given by Sir John and by Mrs Hewit in their letters and depositions. We have seen how they varied in their accounts, and in what manner they agreed in changing the scene of action from Michell’s to Le Brun’s. The accounts given by them of the nurses are contradictory and irreconcilable. A tale is told by Sir John to support his story, and false letters produced to confirm it. Even as to the day of delivery, the 10th July 1748, which is the only thing they have not varied in, in order to prove that, they invent a circumstance which is not true, viz. the receipt of the money sent by Mr Andrieux on that very day ; and Mrs Walker

likewise

likewise deposes to this circumstance and to her having received a letter from Mrs Hewit, informing her of it at the time; though it is plain, from looking into the letters from Mrs Hewit to Mrs Walker, that no such letter could ever have been wrote. If to all this we add the behaviour of Lady Jane, Sir John, and Mrs Hewit at the time, it is impossible for me to give credit to the story of the defender's birth. I am convinced, that the whole is a concerted tale, and an imposture. Could Mrs Hewit have wrote a letter to the maids on the 11th July, and not only not mention Lady Jane's delivery the day before, but tell them she was very well? Would Sir John, on the 10th, have sat down quietly to write five or six letters, had Lady Jane, as they say, been ill all the night preceeding? and would she have been employed in jotting down such an insignificant incident in her pocket-book? It is said, that Mrs Hewit's letter was really wrote on the 10th in the morning, and Sir John's letters on the 9th; but Mrs Hewit's correction of the date is exceedingly suspicious; especially as we see Sir John making a similar correction of the date of his letter to Lord Crawford, by saying, *In my list of the 11th*; and plainly referring to that of the 10th:

That

That Sir John's letters were wrote on the 10th, is evident from one of them; viz. that to Mrs Hepburn; for, in his next to her, he says, *Lady Jane was delivered, &c. on the evening of the last day I wrote you.* Supposing Lady Jane to have been delivered on the 10th, is it probable that no intimation of it should be given to any person, nor one letter wrote to a friend or acquaintance, till the 22d? Sir John could not have concealed so joyful an event for twelve days.

It was said for the defender, that however Sir John and Mrs Hewit may differ in trivial circumstances, they agree in the capital article; and their differing in some collateral circumstances is of no moment: Memory is fallible.

THIS plea is not available here. It is true, they agree in the capital article, that Lady Jane was brought to bed on the 10th of July 1748; but in every circumstance attending it they have varied and disagreed. Is it a circumstance of no moment in what place Lady Jane lay in, and who were present at the birth? In these they have varied and shifted the scene. From the beginning, there was an apparent concealment. Sir John had many acquaintances at Paris at the time; and yet he

he had no communication with any of them. He kept his being there a secret from all his friends with whom he corresponded; all his letters are uniformly dated from Rheims, though written at Paris.

SINCE the house of Madame le Brun has been fixed upon as the place where Lady Jane was delivered, and she and her daughter have been named as witnesses to the birth, it was natural to inquire where Le Brun's house was, and what sort of people she and her daughter were. Michell's house is well known and was soon found out; but whereabouts was Le Brun's house? Truly Mrs Hewit knows not; because she could not remember French names; and Sir John can tell no more, except that it was in the Faubourg St Germain, on the left hand as you go from the Louvre, and by the Rue de la Comedie to the Rue de la Harpe. This is a very general description, and it looks somewhat odd, that Sir John, who could very well recollect the names of the tavern and coffee-houses he frequented at Paris, and the situation of them, should totally forget the house where his lady was brought to bed: The event was interesting to him: he had come to Paris for that purpose; the lady and her daughter were witnesses

witnesses to the birth; he remained, it is said, ten days in the house after; and yet he not only forgets where the house was, but totally forgets the names of the persons. We have seen at what time, and in what manner he recollected the name of Madame le Brun. But who is this Madame le Brun? As Sir John, Lady Jane, and Mrs Hewit lodged in her house, and as there were other lodgers besides, she must have been subject to the police; the officers must have visited her house; she must have been liable to the capitation-tax. The whole quarter of the town named by Sir John has been carefully searched; no Madame le Brun is there to be found; no such woman in the books of police; no such person in the capitation-rolls. Had such a person as described by Sir John and Mrs Hewit existed, she must have been found out, especially by the capitation-rolls, which seem to be accurately kept, and are made up every four months. It is said that Madame le Brun was a *garde malade*; that such people are not subject to the police; and that besides, some persons, such as Swifs, are exempted from the capitation, and many persons escape notice. But this Madame le Brun the *garde malade* will never answer. These *garde malades* are persons who

who perhaps have a single chamber where low women, such as the wives of footmen, or poor mechanics, can be accommodated; and so far as I can learn, no person of any condition ever went to such a place to lie in, but when there was reason for concealment. Lady Jane Douglas sure had no reason to lie in privately and conceal her delivery. But, by Sir John, Lady Jane, and Mrs Hewit lodging in the house, by there being other lodgers besides them, by Madame le Brun's keeping a servant or servants, which they say she did, she must have both been subject to the police, and liable to the capitation; consequently must have been found out. The few instances brought of some low people who escaped the capitation by fraud, show the accuracy and exactness of the rolls. The fraud was soon detected.

From the whole of the proof on this head, I must conclude, that the Madame le Brun mentioned by Sir John and Mrs Hewit never existed; consequently that Lady Jane was not brought to bed in the house of a Le Brun.

That no person answering to the description given of Pier la Marr by Sir John Stewart has been discovered, is certain and acknowledged; and indeed, it was impossible there should;

for I take Pier la Marr to be entirely such another imaginary person as Madame le Brun. Had Sir John's journey from Rheims to Paris been true, and had he met with such a man as this Pier la Marr, is it possible to conceive, that Sir John could have proposed, or that Lady Jane could have agreed, to commit herself to the care of such a person? Or, if she had, Can it be believed she would have intrusted one of the children to the care of a person who was a stranger in France, who was only occasionally at Paris upon some particular affair, and would probably return to his own home so soon as that was over? It is not only improbable, but may be deemed impossible: No person endowed with the smallest degree of understanding, could have acted such a part.

THIS Pier la Marr, therefore, is given up by the defender, and another substituted in his place, who may be supposed to have delivered Lady Jane in 1748. One Monsieur Menager a surgeon has been examined upon this head, and much weight is laid upon his oath. That there was a surgeon at Paris in the year 1748 of the name of Louis Pierre Delamarre, is proved; but that this person should have been the accoucheur who delivered

vered Lady Jane, cannot be. The La Marr who attended Lady Jane was a Walloon. He had been surgeon to a regiment before 1721, and was then a noted accoucheur. This French La Marr was born at *Montreuil sur mer* in Piccardy in 1711, had served in a barber's shop in Paris in the 1734, was afterwards an attendant at the Hotel Dieu for some years, and an acquaintance of Monsieur Menager, and never was either surgeon to a regiment, nor out of France. The story told by Monsieur Menager, and now adopted by the defender, is, that in the year 1747 or 1748, La Marr imparted to Menager, that he was engaged to bring to bed a foreign Lady, who had come from beyond sea, and who was advanced in years: That La Marr desired his, Menager's assistance; which, however, he did not give: That La Marr afterwards told him, that the Lady was delivered of twins, one of whom, being weakly, was committed to his care, and of whom he had the charge for several months: That La Marr told the story in the *chambre de garde à l'Hotel Dieu*, in presence of Monsieur Gilles, Monsieur Melé, and others: He says La Marr was connected with a Madame le Brun, who kept one of his depots, of which he had several: That he did not know where Madame le Brun lived,

but

but judged it was in the *Quartier de St André des arts*, because he saw La Marr often turning to that hand. La Marr told him particularly, that he had been bespoke for bringing that foreign Lady to bed before her arrival at Paris. The other gentlemen have been examined: They agree that La Marr told them that he had brought to bed a Lady who came to Paris to lie in privately: That the conversation happened in the *chambre de garde*, where La Marr then attended. Now, it is certain, that La Marr was dismissed from the Hotel Dieu in the year 1746, or beginning of 1747; and the gentlemen then present never saw him there afterwards; therefore this accouchement performed by La Marr cannot apply to Lady Jane Douglas. None of these gentlemen knew any thing of La Marr's connection with a Madame le Brun, nor of the other particulars mentioned by Menager. It is plain to me, from the whole oath of Menager, that he has either been instructed, or has wantonly volunteered, by adding circumstances to the simple story told by La Marr in 1746, to accommodate his oath to Sir John Stewart's declaration. In point of time, the story told by La Marr cannot agree to Lady Jane; neither can it agree to her,

her, that La Marr was bespoke before she came to Paris; for, though sir John has said so, yet that is now given up; and the story of Madame le Brin, and her living in the *Quartier de St André des arts*, is artful enough, as that is the Quarter of the Fauxbourg St Germain which is upon the left hand going from the *Pont-neuf* by the *Rue de la Colonne*.

Thus Louis Pierre Delamarre, therefore, could not have been the accoucheur of Lady Jane Douglas; and I think the oath of Mr Manger does no credit to the cause. Had there been a surgeon alive at Paris in 1750, who delivered Lady Jane, (and this La Marr was alive at that time), and a landlady who was with her, would not sir John and Lady Jane have applied to them for certificates of the delivery properly attested, instead of writing to Mrs Tewis at Aix-la-Chapelle for attestation of Lady Jane's pregnancy, which could signify nothing? They seem then to have been anxious to secure the birth of their children from being challenged. It would have cost no more trouble to have procured unquestionable evidence, if the fact was true, than it did to procure Mrs Tewis's declaration.

But the proof brought on both sides rested

ed here, I should, for the reasons I have given, been of opinion for the pursuers. On the part of the defender, there is nothing to support his filiation, but a tale big with absurdity and contradiction. The behaviour of his supposed parents inconsistent with his being truly their child, their averment founded on falsehood, and supported by forgery: I say, had no further evidence been brought in this cause, I must have been of opinion for reducing the service. But, when we consider the positive proof that is brought of the place where Lady Jane and Sir John resided at the time assigned for the delivery, all dubiety must vanish. Sir John and Mrs Hewit have said, that Lady Jane was brought to bed in the house of Madame le Brun on the 10th July 1748. But neither of them can tell where that house was. On the contrary, there is the strongest evidence that the nature of the thing can admit of, that no such house, and no such landlady existed. It is proved and admitted, that, on coming to Paris, they lodged at the Hotel de Chalons till the seventh or eighth of July. Mr Godefroy and Mrs Godefroy who kept that hotel, have sworn positively, that they intended indeed to have moved on the 8th; but that, on pre-
tence

tence of the other lodgings not being ready, they continued to lodge at his house till the 14th. Godefroy has exhibited his accompt-book, in which the accompt of their expence during their stay in his house is ingrossed; and to that accompt, as relative to Sir John and his company, he and his wife depose. Lady Jane brought forth no child during her stay in the Hotel de Chalons: She resided there from the 4th to the 14th of July 1748. This evidence, therefore, is exclusive of the possibility of the defender's birth on the 10th July in the house of Madame le Brun.

It has been objected, on the part of the defender, to this evidence of Godefroy's, 1^{mo}, That it is not credible, that Godefroy and his wife, who have kept a public-house so much frequented, could, after so many years, recollect the time Sir John and Lady Jane staid with him in 1748; 2^{do}, The accompt being blank in the title, cannot be applied to Sir John Stewart, but may relate to any body else. 3^{do}, At any rate, it cannot afford a sufficient cause of knowledge, for, as there are many other accompts in the book blank in the name, and Godefroy does not remember to whom they relate, he is not to be believed, when he applies this account to Sir John Stewart.

IN my humble opinion, there is nothing in these objections : For, in the *first* place, it is not more incredible, that Godefroy should recollect the particulars he swears to, than that the other witnesses who have been examined in this cause should do so ; many of whom have deposed to facts and to conversations, which were as liable to be forgotten as this. It is certain, that Godefroy recollected Sir John particularly. He remembered, that he had been recommended to him by Mr Maillefer at Rheims ; and, though the letter he received on that occasion was then fallen by, it has been since recovered and produced, and vouches for his memory. In the *next* place, as to the particular time of Sir John's being at Godefroy's house, he does not swear altogether from memory : His answer to the question is : It will appear from my book at what time he entered, and when he went away ; and the book is produced. It does not much import, that the title of the account is blank ; had the name of Sir John been there (as probably it would have been, if Mr Maillefer had mentioned the name in his letter), there could have been no doubt ; and I do not think it an extraordinary effort of memory, that Godefroy, who lodged such a

company

company of strangers, recommended in a particular manner to him, should recollect, that such an account related to these persons ; especially as Sir John returned alone to his house some little time after, and staid four days ; and the account for that time with Sir John's name ingrossed, is in the opposite page of the book to the account in question. Besides, it is not possible to explain how, or from what circumstances, a person may recollect a fact. We see here, that Godefrey had considerable aids to his memory ; and there is not one single circumstance in the proof which contradicts what he has deposed, excepting Sir John's declaration and Mrs Hewit's oath. But neither of them pretends to know where the house was, in which they say they lodged on the 14th July. As to Godefrey's not being able readily to say, to whom the other blank accounts in his books did apply ; I do not think this an objection of any moment to his evidence. It may be, that he would have recollected, had there been such special circumstances to recall things to his memory as there was in this case. But whether he could or not, it will not follow, that therefore he has sworn falsely as to Sir John

Stewart. Had there been in proof any fort of evidence that Sir John was in another place at the time, and, if it had been doubtful which to give credit to, the import of the evidence on either side would fall to be considered and compared together. But, when it cannot be shown, that Sir John was in any other house, to discredit the evidence of Godefroy, who asserts he was in his, upon such an objection as this, that it is not probable he could remember the fact, because he may have forgotten other facts which have no relation to it, is out of all fight. Godefroy and his wife are proved to be persons of good fame; they seem also to be in affluent circumstances for people of their station; and it does not occur what possible temptation they could have to swear to a falsehood. Godefroy told the story the same way from the beginning, and to every one who made inquiry at him. We have the testimony of Madame Guy for this, who being employed for the defender went to his house to interrogate him, when he showed her his book, and pointed out the account therein, as relative to Sir John Stewart. In a word, it appears to me, that Godefroy and his wife are candid and credible witnesses;

nesses ; they have deposed to a fact which they had access to know. There is not a syllable of evidence in the whole proof (except the tale told by Sir John and Mrs Hewit) which is inconsistent with or contradicts what they say ; and I can see no reason why they ought not to be believed. This then to me is decisive of the cause ; for, if Lady Jane was not delivered on the 10th July 1748 in the house of Madame le Brun, as it appears she was not ; because on that day, and for several days before and after, she was not at Le Brun's, but at Godefroy's, where she was not delivered of any child ; it follows, as a necessary consequence, that the defender is not her son.

THERE are many other particulars in the proof which I do not think necessary to say much upon ; I shall only mention some of them.

IT is said, that the suspicions of the reality of the defender's birth were raised and propagated by the friends of the family of Hamilton : That the reality of the birth was never doubted of abroad by any body ; and that it is not probable Sir John and Lady Jane would have carried a child, procured in the way it is said the defender was, to Rheims, where there was such danger of detection.

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As to the suspicions entertained in this country, it does not appear to me that there is any proof from what they arose, or who propagated them; nor do I think it of any importance to inquire from whom they proceeded: Certain it is, that they were early entertained, and that Lady Jane and Sir John were informed of them in a few weeks after the birth was notified in Britain. It does not indeed appear, that any suspicions were entertained at Rheims: Sir John and Lady Jane were strangers there; no body was interested to inquire; and it would not readily occur to doubt of a thing one had no concern about. As to the danger of detection, there was, no doubt, a risk; but that risk was not great, as matters were managed; for it does not appear that more particulars were mentioned at Rheims, so as to lead to a discovery, than were communicated to friends in Britain to whom the event was notified, if the people at Rheims believed the birth to have happened at Paris, at the same time that their acquaintance at Paris, as well as their friends in Britain, were kept in the dark as to that particular.

It is said, that there does not appear any motive that could induce Sir John and Lady
Jane

Jane to commit the crime they are charged with, and that their character puts them above all suspicion of being guilty of so wicked an action; besides, they were in such straits for money, that it cannot be supposed they would take the charge of two children, not their own, when they could hardly subsist themselves.

IN my opinion, character has little to do in the matter, where the question is, Whether a fact be true or false? And as little is it necessary to assign motives which might induce a party to act. If a crime is charged and proved, it is no defence to say, that the party had such a character, and the motives are not assigned: The truth of the fact charged must stand upon the evidence brought, whatever may have been the character of the party accused. In the present case, I think the fact is proved; though, if character were to be taken into consideration, I do not think that of the parties concerned appears in the most amiable light. I do not mean the opinions or tendency of the witnesses, that they are of a bad character, or speak of the conduct of the accused with disapproval. As to motives, they are not necessary to assign them: The fact is proved, and the motives are not to be taken into consideration; because it is

impossible to dive into the minds and thoughts of men, which are so various that the same reason will frequently move different men to act quite different and contrary parts: But, from the proof before us, there appears to have been some motives which might influence Sir John and Lady Jane: They seem both to have had an expensive turn; and, as they fell upon many expedients to get money, it is more than probable, their strong motive was to procure a settlement from the Duke of Douglas. We do not see any application made to him till the marriage was notified, with a hint that it was likely to prove fruitful. Lady Jane till then seems to have been satisfied with the L. 300 a-year, which her brother allowed her, and which was regularly paid. But, after that time, he is applied to for a settlement, and their friends are earnestly solicited to support the application. By the letters to Lord Milton, it appears, that if fair means did not prevail, there were others suggested which might be sufficient to induce his Grace to comply. And if this was a motive, as it seems to have been, it affords at the same time an answer to the argument used for the defender, arising
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from the expence of keeping supposititious children when they were in such straitened circumstances.

THERE is great weight laid upon the affection shown by Lady Jane to the children; which, besides being deposed to by several witnesses, appears from the letters which passed between her and Sir John while at London.

It is indeed in proof, that Lady Jane showed much affection to the children; and in these letters her expressions are full of tendernefs. But her actions contradict her expressions. Lady Jane's behaviour with regard to the youngest child is such as a tender parent could never have had. This child is represented as so very weak at his coming into the world, that it was necessary for the accoucheur to besprinkle him; a thing that is never done but in the most extreme necessity, and most eminent danger of death: Yet this very weakly child, who, it was thought, could not live if not sent immediately to the country, was never once inquired after by Lady Jane: She never saw him till he was sixteen months old: This surely was not the part of a tender mother. That she knew of his weakly condition, appears from her letter

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ter of the 6th August to her brother. If she could not go to see the child herself while at Paris, Sir John or Mrs Hewit might have gone to inquire after him: It is not pretended Mrs Hewit ever went; and I think it pretty evident that Sir John was as great a stranger; for had he been in use to visit the child, he must have known where he was kept, and could have found out the place without the assistance of La Marr; which, however, he says he could not do. It is pretended they often heard of him by means of La Marr: Had that been so, it might satisfy them perhaps, while at a distance; but will not account for the neglect and indifference shown during their stay at Paris. There is a circumstance which here occurs, and which should have been mentioned before, *viz.* the name of *Sholto* given at this time to the child: No name is ever given at an *endowment*, and it is only in the letter of 6th August, that Lady Jane desires her brother's leave to name the one child Archibald, the other Sholto, which is evidence, that neither of them had at that time any name. And this serves also to prove the forgery of La Marr's letter of 1752, in which he names the youngest child *Sholto-Thomas*, though he was not baptised by that name till after they

had

had been some time in England in 1752. This behaviour of Lady Jane convinces me, that there was more of affectation than reality in her expressions of tenderness. Besides, it was natural for her to be on her guard, and to behave in such a manner as not to betray the secret : Affection also might grow from habit ; and it has a very singular appearance, that such a number of these insignificant letters as have been produced should have been preserved, and yet not one of the many letters said to be wrote by the accoucheur should make its appearance. But what satisfies me perfectly on this head, is the whole of her conduct from first to last. It was in her power, if she was really the mother of these children, to have removed every doubt and suspicion as to their birth ; it was her duty to have done so ; she never did it, or took any effectual step to do it. The procuring of one authentic certificate of the birth, would have shown more love and affection to her children, than hundreds of letters wrote to Sir John, containing the tenderest expressions.

After having said so much, and delivered my opinion upon the point in issue, I should not think it necessary to add any thing more, were it not that a proof has been de-

voured to be brought of the way and manner in which these children were procured. Had nothing of this kind been done or attempted to be done, it would not influence the question, nor alter my opinion. I think it proved, that the defender neither is, nor possibly could be the son of Lady Jane Douglas; whose child he is, or in what manner he was adopted by her and Sir John Stewart, is of little moment. It was, however, the duty of the pursuers to bring a proof of that, if in their power, though matters might have been so managed as to render it impossible to do so. As to the proof brought, whatever exception may be taken to the depositions of the Mignons in other respects, I think there is undoubted evidence, that Mignon's child was carried off by strangers in July 1748, and before the 22d day of that month: That these strangers were a man and a woman, who pretended they wanted the child only for a few weeks, to show to a Lady newly delivered, but whose child had died. It is also undoubted, that Sanry's child was carried off in November 1749 by strangers also, a man and two women, who lodged at the *Croix de Fer*, and who said they were *Irlandois*. It is very singular, that both these enlevements should

happen

happen at the precise time when Sir John and Lady Jane were at Paris, and should be attended with such circumstances as must create the most violent suspicion, that they were the persons who carried off the children. As to Mignon's child, the circumstance of the child's dress, deposed to by Mignon, and confirmed by Madame Favre the nurse, is remarkable. It is also remarkable, that Sir John and Lady Jane came to Michell's without any child; that the next day, when all the three went to bring the child, they brought it home and a nurse along with it; but such a nurse as no child, even of the poorest person, ever was intrusted to, a poor beggarly thief, picked up in the streets, who had no milk in her breasts. The account given by Mrs Hewit of this matter is, that Madame le Brun had recommended a nurse who staid with them in her house while they continued to lodge there, but who was permitted to carry the child to her own house when they removed to Michell's: That Sir John afterwards going to see the child, found the nurse drunk, and thereupon sent the coach for Mrs Hewit, who went and brought him home: That they got a milk-woman in the neighbourhood to give him suck, till

Sir John found a nurse somewhere in the suburbs; but she proving a bad one, and having no milk in her breasts, was dismissed, and the milk-woman again employed. This story, told by Mrs Hewit, is incompatible with, and contradictory to what happened at Michell's, as deposed to by Madame Michell, Madame Blainville, Madame Favre. Besides, the story is inconsistent; for, had the child been left with the nurse they had while at Madame le Brun's, he could not have been famished for want of nourishment; she had suckled him, by their account, at least for ten days, and though she had been so abandoned as to be drunk, yet she had milk to give the child. But it is in proof, that the child, when brought to Michell's, was in a piteful condition, quite famished, and the nurse they brought with them had no milk. This therefore could not be the nurse formerly employed; and that they brought a nurse with the child, is certain. Now, supposing the child thus brought to Michell's to be the child procured from Mignon, and who must have been secreted a day or two, he would naturally be in the condition described, almost dying of hunger, which Lady Jane's child could not have been, as he was, till that moment

ment, with a nurse who had suckled him for ten days without any complaint. Besides, the child brought was three weeks old at least, as deposed by Madame Favre. All these circumstances are well accounted for on the supposition of this being the child got from Mignon; but will not apply to a child born by Lady Jane on the tenth of July. The time also agrees with the rest of the proof; the enlèvement happened exactly at the time when Lady Jane, Sir John, and Mrs Hewitt, were secreted after they left Godfrey's on the 14th, and when none of them can give any account of themselves, or say where they lodged. It is also very remarkable, that no notification was given of the delivery of Lady Jane, (though said to have happened on the 10th), till the 22d July, which was after they had brought the child, in the manner we have seen, to Michell's.

As to Samy's child, there was an actual theft; and the time when it happened is pretty nearly ascertained to be when Sir John and Lady Jane were at Paris in November 1739. Sir John, when interrogated, can give no account where he put up during their stay at Paris at that time; and the incident of Lady Jane's headache, when they had set out
to

to fetch their child, and of her and Mrs Hewit's being set down at a house they knew nothing about, till Sir John and La Marr brought the child, is somewhat singular. However, this is the story told; but then, Sir John and Mrs Hewit do not quite agree in their accounts. Sir John says, he intended to stay only one night at Paris: That the first thing he did, was to inquire for La Marr, as without him he could not have found the child; and that La Marr came to them either that night or next morning. Mrs Hewit says, she is positive La Marr did not come till the last day of their stay at Paris. Sir John and La Marr brought the nurse and child to the house where they had left Lady Jane and Mrs Hewit; and the nurse being paid by Sir John, says Mrs Hewit, by La Marr, says Sir John, they set out for Rheims next morning. The whole of this story is most improbable, and, like the rest, the parties do not agree in their accounts. There is a total failure of memory as to those circumstances from which the truth or falsehood of it could be ascertained; and from the whole of the proof on this head, it is apparent, that this journey to Paris in 1749, is attended with the same marks of mystery and

and concealment, that runs through the whole of their behaviour.

HOWEVER, in order to support their account, there is adduced a witness, Madame Garnier, who is said to have been the person who nursed Sholto. But, upon comparing her oath with those of the other witnesses, and with the history of Lady Jane's delivery, it plainly appears to be such an oath for proving the nursing of Sholto, as Menager's is for proving Louis Pierre Delamarre to have been the accoucheur of Lady Jane: That this Madame Garnier had a child committed to her to be nursed in 1748, may very well be believed; indeed, there is evidence of it; but that this child could be one born of Lady Jane Douglas on the 10th July 1748, and sent either that day or next morning to her, is impossible. Every circumstance contradicts the supposition; although there are several particulars sworn to make it quadrate: Madame Garnier got this child when her son Jerome was six months old; she nursed him on Jerome's milk, and kept him eighteen months. Jerome is proved to have been born in March 1747; she, therefore, did not receive her foster-child till the month of September 1748, and kept him till February or March 1750. And

this agrees with the manner she says the child was brought to her, which was in a coach, and with torch-light, about nine o'clock at night. This might very well be in the month of September; but there was no necessity for torch-light on the streets of Paris, in the beginning of July. Besides, her account of taking the child from her does not agree with that given by Sir John and Mrs Hewit.

I shall not go through the particulars of the proof of these enlevemens; they are well known to all of your Lordships: The description given of the persons is not such as of necessary consequence to bring them home to Sir John Stewart; but, from every circumstance attending them, and from the whole of the evidence, I incline to believe, that he was the person, though I do not found my opinion in the cause upon that: My opinion goes upon the improbability of Lady Jane's having been really with child; her whole conduct and behaviour contradicts the supposition; on the care taken by her and Sir John to withdraw from their acquaintance, nay, even from their servants, and not only to secrete and hide themselves, but to conceal every thing most material to be known even from their nearest friends; on the inconsistencies,

consistencies, contradictions, and falsehoods in the accounts given by Sir John and Mrs Hewit, supported by Mrs Walker, upon their neglecting to get proper certificates of the birth, which it imported them much to get, and which, we see, they were, in 1750, desirous to procure; and, instead of such, producing and using false and forged letters to supply the deficiency; and, lastly, upon the positive proof of Lady Jane and Sir John's being at Godfroy's on the day assigned for the birth, which is exclusive of the possibility of her being delivered of any child on the 10th July 1748. It is upon these grounds, that I am of opinion for reducing the service.

L O R D S T O N E F I E L D.

IN this case, I have had great difficulty. The bulk of the proofs, the prolixity of the pleadings, and the diffuseness of the memorials, though artfully and ably wrote, rendered it not an easy task for me to collect the material parts of the evidence, and to bring it to a point. I was almost lost in a labyrinth of proofs and arguments: But, on reconsidering it within these few days, with a view to advising the cause, I have formed the same opinion with that first delivered, and with those delivered yesterday.

In the entry, I will take notice of one or two articles that have been brought into this question; but which, I apprehend, do not belong to it.

I little expected to have heard any clamour again raised against the Tournelle process, after the full and satisfactory account given of the nature of these proceedings in the pursuers memorial; much less did I expect to hear it compared to forgery and the deepest of crimes. The extravagance of this idea
is

is a sufficient refutation of it. It always appeared to me a regular and competent process.

NEITHER did it occur to me that the conduct of the cause could be blended with the merits of it. The conduct of a cause may be wrong, and the cause itself may be right. Agents may have acted improperly: Let them account for their conduct; but I do not see how their conduct can affect the parties. This court will never forfeit a party of his right on account of the misconduct of his agent. But, in the management of this cause, I see nothing reprehensible in the conduct of the agents on either side: On the contrary, the conduct of the agent on the part of the pursuers appears to me to have been so fair, so candid, I had almost said so impartial, that it does honour to himself and to his profession. But these matters I only touch upon, they being foreign to the present question.

BOTH parties seem to have pleaded the points of law in this cause too high; which, from their anxiety, is very natural, and what indeed very frequently happens. The pursuers argue, that a service is of no avail when a reduction of it is brought: The defender, on the other hand, maintains, that it is a
barrier

barrier almost unfurmountable, *pro veritate habetur*, and that it requires the strongest, direct, and positive evidence to reduce it. I subscribe to neither of these opinions. Services are generally founded on circumstantial and presumptive evidence: As opposition is seldom made to them, they are often carried on in a slovenly manner, and generally are expedited without much inquiry or attention; for these reasons they are, as Lord Stair expresses it, *easily reduced*.

IN order to reduce a service, it is only necessary to bring stronger evidence than that adduced in the service: But a service is still of some avail; for it throws the *onus probandi* upon the pursuer of the reduction; and it remains unshaken until he has brought such stronger evidence in opposition to it. This evidence must not preponderate a *little* over the evidence brought in the service, but it must do it *considerably*; it must carry conviction along with it, that the service was erroneous, either from want of evidence, or as proceeding upon false evidence.

WHEN the pursuer of the reduction has thus brought stronger evidence in opposition to the service, the *onus probandi* is transferred to the other side. It is then incumbent on the

the defender to bring further evidence in support of his service; and this the defender has in fact admitted in this case; for he has brought additional evidence, and much stronger evidence than any adduced in the service. He has produced a train of private correspondence betwixt Lady Jane and Sir John, which have great weight in this cause.

The last point to be considered is the proof of Lady Jane's pregnancy. The appearances of pregnancy are very strongly proved by a number of persons of character; but the contradictory evidence that is brought renders this circumstance somewhat doubtful.

LADY JANE is represented by some of the witnesses so big, so unwieldy, at Aix-la-Chapelle, at Liege, at Rheims, and other places, that it could not escape the notice of any person who had eyes: Yet, by the evidence of other witnesses equally credible, it appears not to have been observed at all by some, and to have been but slightly remarked by others; particularly, in the last stages of the alledged pregnancy, when it ought to have been most observed, had it been real: Thus at Rheims, and at Paris, and on the road, there is scarce any evidence of its having been observed.

SOME

SOME circumstances in the conduct of Lady Jane about this period, render her pregnancy much suspected. We find her, when it is said she was four months gone with child, denying her marriage to her friend and acquaintance, Lady Katharine Wemyss; yet, about the same time, exposing her pregnancy to nuns and strangers. We find her leaving Aix-la-Chapelle, when near her supposed time of delivery, without any cause; when, on the contrary, she had great reason to have remained in that part of the country, till after her delivery, as then she was on the eve of procuring an offer of the Count Salm's country-house to ly in at, which she had solicited, and which was a situation to be wished for by her for her delivery, in her then circumstances. There she might have been delivered in quietness and safety, by able assistance from Aix-la-Chapelle or Liege, at no expence for lodging, and at a small one in other respects. Thus she might have avoided the great expence, the trouble and danger to her, if pregnant, of a long and tedious journey. We find her concealing her intention of going to Paris, although her supposed errand thither was the pride of her heart. We find her travelling a long journey in ve-

ry uneasy machines, at late and early hours, and even on one occasion sitting up all night, when she scarcely had any time to reckon. Well, her journeying, notwithstanding of her ill health and illness at Sedan or Rhetelle, at such late hours, that Mrs Hewit was afraid she would have been delivered. We find her leaving her maid servants behind at Rheims on a false pretence of want of money, at a time when their attendance on Lady Jane would have been most useful and necessary, if there had been a real pregnancy. It is pretended, that she went to Paris in quest of able assistance to her in-lying; yet she leaves Liege and other places where good assistance was to be had. For this purpose, she made a very long journey; but it is not pretended, that any person of character was employed as an accoucheur. It is averred, that a low, unknown accoucheur was employed, and who was picked up very accidentally. These inconsistencies of conduct, and contradictions in the evidence, rather denote a feigned than a real pregnancy. But the evidence of pregnancy amounts only to a proof of the appearances of pregnancy. Such appearances are often fallacious, equivocal, and never certain, particularly in a person of Lady Jane's

Jane's age. Women have been frequently deceived about their own pregnancy; much more easily than may others be deceived by such appearances. This evidence, therefore, of a pregnancy is not conclusive. Appearances are never depended upon, in order to prove a real pregnancy; for that purpose, a further, and very particular investigation is always insisted upon, when there is any doubt of a pregnancy, and when such investigation can be made.

ON the other hand, the evidence brought on the part of the pursuers against Lady Jane's pregnancy, is only negative, and therefore not conclusive; but indeed, such must necessarily be the nature of this evidence. It is almost impossible to prove, that a woman was not pregnant at any past period, when she asserts that she was then with child. The question, therefore, whether Lady Jane was really pregnant or not, must depend upon the next capital point in the cause, *viz.* the proof of her delivery.

THE accounts given of the circumstances attending the delivery by Sir John and Mrs Hewit, the only witnesses to it, are full of inconsistencies and contradictions; and therefore not to be credited: And the other evidence

dence on this point tends to disprove it. There is no evidence, except in their own family, that they gave out at Rheims that Lady Jane went to Paris in order to be delivered. On the contrary, when Sir John applied to Monsieur Maillefer for a recommendation to an Hotel at Paris, the pretence assumed was, *to make purchases*, not that Lady Jane had occasion for an accoucheur. Even her pregnancy was not known to Monsieur Maillefer. At Godefroy's, to whom they were recommended as persons *intending to make some purchases*, her pregnancy was not observed; and it does not appear, that at Godefroy's they mentioned this purpose of their coming to Paris, *her being to lie in*. As they had no acquaintance at Paris, or, which amounts to the same thing, as they did not desire to see any of their acquaintance there, it is almost incredible that they should not have mentioned this purpose to some of the people of the Hotel. In such a situation, they certainly would have applied to some of Godefroy's people for aid in finding out proper lodgings for Lady Jane to lie in at, and an able accoucheur. But their leaving Godefroy's without making any such inquiries, and without any of the people of the house observing Lady Jane's pregnan-

cy, is a circumstance strange and unaccountable, on the supposition of a real pregnancy.

WE have no evidence of what passed from the time of their leaving Godefroy's, till they make their appearance again a few days after at Michell's, except the account given by Sir John and Mrs Hewit; and it cannot be discovered where they were, or what was transacted in this period. No Madame le Brun has been found out, nor any of the witnesses who are said to have been present at the delivery, notwithstanding that the utmost search has been made for them; and notwithstanding the accuracy of the books of police, by which probably they would have been found out, had any such persons existed. The account given by Sir John and Mrs Hewit, of the transactions of this period, are contradictory and unaccountable. Lady Jane never mentioned the place of the birth, or the name of the accoucheur. Sir John did not mention them till pressed to it by Mrs Napier, then he named Michell's as the place of the birth, and Mrs Hewit seems to have concurred with him in mentioning Michell's to have been the place of the birth: Afterwards, they both concur in fixing the delivery to Le Brun's. The reasons for this variation in their accounts are obvious on the supposition of an imposture;

Mrs

Mrs Hewit wrote to the maids from Paris, that there was no keeping Lady Jane in bed after the ninth day from the time of delivery. In the service, ~~she~~ deposed, that they left Le Brun's on the tenth day; and a few months after, upon full and mature recollection, she corrected that part of her oath in a letter to Mr Harper the clergyman, and declared, that they left Le Brun's on the sixth day after the delivery: That a woman of any condition should go abroad the sixth day, or even the tenth day, after her delivery, is very improbable; but that a person of Lady Jane's high rank, and of so delicate a frame, should move from her lodgings so soon, is still more extraordinary.

It cannot be credited, when they were at so much expence, and so much trouble to have Lady Jane properly taken care of at her in-lying, that she would have put up with such an Hotel as Le Brun's is represented to have been; a *dépot* fit only for the accommodation of maid-servants, and the lowest of the people.

It is in proof, that at Michell's they appeared without any child, and next morning they all three went out in a coach. Lady Jane, who is said have been brought to bed
only

only six days before, as well as Sir John and Mrs Hewit, giving out that they were going to St Germain's, to bring home a child they had there at nurse : That they returned next day, bringing a child along with them, in circumstances in no respect corresponding to the child of so affectionate a mother as Lady Jane is represented to have been. The child appears to have been quite starved for want of food, and attended by a nurse picked up in the streets of Paris, who had no milk, and who was branded for a thief. They had no occasion to pick up a nurse in a hurry, as it is said that Lady Jane went to her full time ; and that there was no difficulty in procuring a good nurse at Paris, is evident ; for, in half an hour Michell's people procured a very good one, Madame Favre. These circumstances, with the contradictions and inconsistencies I have mentioned, announce a feigned delivery, not a real one ; a child procured by stealth, not the child of Lady Jane ; and a nurse picked up in the hurry of an enlèvement, not one diligently and cautiously chosen to suckle the heir of Douglas.

THEIR conduct towards the children tend to confirm this conjecture. A day or two after Madame Favre was procured, she was allowed

lowed to carry the child to her own house, where he remained for eight and forty hours, without Sir John, Lady Jane, or Mrs Hewit's going to see him, or even knowing where he was. This is extremely improbable on the supposition, that this child was really Lady Jane's. The other child, it is alledged, was committed to the care of a La Marr, and remained in the neighbourhood of Paris for eighteen months at nurse, with a woman they had not seen; during which time, neither Lady Jane, Sir John, nor Mrs Hewit went to see him, although they continued at Paris, and in the neighbourhood of it, for more than a month after the pretended delivery, and an hour's drive was sufficient for that purpose; nor does it appear, that they knew where he was; neither did any of their acquaintance, of whom they had many at Paris, go to see the child during all that time; none of them had a direction, by which they could find him out; not even the Chevalier Johnson, Mrs Hewit's cousin, and who was an intimate acquaintance of Lady Jane and Sir John. These circumstances lead one to conclude, that there was no child of theirs at all in the neighbourhood of Paris.

THE

THE account given by Sir John of La Marr, is full of falsehoods, improbabilities, and contradictions. Sir John's La Marr appears to be quite a different person from Louis Pier Delamarre, whom the defender now endeavours to substitute in place of Pier la Marr. The one is represented as an old man, the other is proved to have been a young man in the 1748. The one is represented as a stranger at Paris; the other is proved to have been a residenter there. The one is a Walloon; the other a Frenchman. Then it is proved, he was bespoke for the delivery, before their coming to Paris, and that he was not bespoke; that they had his address, and that they had it not. How is it possible to find out truth, or to have any dependence on such contradictory evidence?

NEITHER does Menager's evidence seem to aid the defender. He has probably taken the name of La Marr from the proceedings in this process, and applied to it the account he gives of Louis Pierre Delamarre: He has adapted the circumstances of an in-lying in the 1747 to this pretended one in the 1748. He has likewise borrowed the name of Le Brun from this process. He says he was acquainted with her, but can give no account of
of

of her. The same observations may be made on the evidence of Madame Garnier. She too has borrowed the name of Pierre la Marr from this process, and applied it to Louis Pierre Delamarre. She has adopted the story of the nursing of Sholto to the circumstances of her nursing some other child. The time of the year in which the child was brought to her, and the age of the child, don't correspond with the account given of Sholto: And though she says, she saw La Marr once every month while the child remained with her; yet she cannot describe his person.

Their concealment at Paris, even from the most intimate of their acquaintance, particularly from Chevalier Johnston, is a very suspicious circumstance. Their dating their letters from Rheims, while they remained at Paris, is another strange circumstance. Their writing six letters on the 14th of July, without making mention of the delivery, or that Lady Jane had been ill the preceeding night, are not properly accounted for on the supposition of a real delivery. Their postponing to notify the birth for twelve days after it is said to have happened, to any of their friends or relations, is a circumstance not easily accounted for on the defender's supposition.

position of real birth. It is believed, this never happened to any lady of rank greatly inferior to that of Lady Jane.

THEIR having too many servants every where else, and none at all at Paris; their being very lavish at Rheims on occasion of the baptism, and very economical on both their journies to Paris, are circumstances which tend to the same conclusion.

ALTHOUGH Godefroy's books, supported by the evidence of himself, his wife, and Madame Guy, would not alone be conclusive evidence in this cause; yet, when joined to the rest of the proof, they do, in my opinion, carry conviction along with them, that Sir John, Lady Jane, and Mrs Hewit were at Godefroy's Hotel from the fourth to the fourteenth of July 1748.

BOTH enlevements seem to me to be fully proved. But the descriptions given of Sir John and the ladies, are too vague and uncertain to bring them home to them; however, they are of some weight, as they appear to be the only enlevements that have been perpetrated at Paris for many years back, and to have happened in the years, the months of those years, and at the time when Sir Jane, Lady Jane, and Mrs Hewit were in
Paris.

Paris. Then the ages of the children correspond to that of Lady Jane's alledged children. This coincidence of circumstances is very surprising. The faint resemblance that appears betwixt the swaddling cloaths of Mignon's child and the defender, is likewise of some weight.

THE after conduct of Sir John and Lady Jane tend greatly to support the supposition of a fraud in this case. In a few weeks after the alledged birth of the children, they were acquainted of the suspicions that were raised of these children being supposititious, and they seem to have been sensible of the propriety of removing these suspicions, though they took no steps in order to do it, except it has rather tended to confirm those suspicions. By return of post, they might have had authentic certificates of the birth of the children from La Marr and the people who were present at the delivery : But this they did not attempt. In place of which, Lady Jane applied to Madame Tewis at Aix-la-Chappelle, in order to procure proofs of the appearances of pregnancy, the most forcible evidence they could have brought; and the answer is, that it is in evidence, that Lady Jane was not supposed to have been a-

bove two months gone with child, when she changed her lodgings from Mrs Tewis's house. Had there been a real pregnancy, stronger evidence might have been expected from the houses in which Lady Jane had lodged in after periods, of her alledged pregnancy, at Aix-la-Chappelle, Liege, Rheims, and Paris. Her neglecting to apply where better evidence might be had, presumes a diffidence of the success of any such application. Their neglecting to procure authentic documents of the delivery at Paris, presumes much more strongly, that such documents could not be obtained: Their being sensible of this defect, and their endeavouring to supply it by forging letters and certificates of the delivery from La Marr, is convincing evidence, that a real certificate could not be procured. Forgery and falshood is never used to support truth: It can stand on its own legs without any such aid.

THE whole evidence connected together, joined to the failure of proof on the part of the defender, brings conviction to me, that there was no pregnancy in this case, no delivery, no Le Brun, no La Marr, and no child of Lady Jane's at the Hauteborne.

THE

THE strongest circumstances in favour of the defender, are the letters from Lady Jane to Sir John. They indeed contain convincing testimonies of the most sincere affection on the part of Lady Jane to the children; but they do not amount to a proof of the defender and his supposed brother's being her children. It has been often observed in the cases of adoption and of nurses, that women acquire, from the acquaintance and endearments of children, an affection for those of other women, equal to maternal affection. Lady Jane had adopted these children. It was natural for her to conceive a great affection for them; and she was bound by every tie of honour, of safety to herself, and humanity to the children, to support the character she had assumed.

A passage was, the other day, read from the Institutions of Lord Stair, in which it is laid down as law, that the declaration of a father, asserting that a child is not his, whom he has treated as such for some years, is not credited; although it is contrary to humanity to suppose, that a parent could be led to make such an assertion, if the child was really his. If the law gives no weight to the declaration of a parent in such a case, what weight

weight ought we to give, in opposition to the strong proofs already mentioned, to the declarations of the parents, in the present case, in favour of the defender, when they were bound by every tie of honour, of safety to themselves, and humanity to him, to make such declarations, even although he was not their son?

After having said so much, it is unnecessary for me to add, that I am of opinion for sustaining the reasons of reduction.

LORD

L O R D P I T F O U R.

THE cause now under your Lordships deliberation is of great importance, not only with respect to the extent of the subject in question, but also in point of precedent. It affects one of the most valuable privileges of mankind, birthright, the foundation of every other privilege, of all the comfort that can be had in family, friends, relations, or society; of the possession of estates, honours, offices of dignity and trust; and, indeed, of every other happiness that can be enjoyed in this life. It is not to be supposed, that the law would neglect to guard this valuable privilege, so as it might not be liable, on every occasion, to be rendered uncertain and the possessor insecure. The act of delivery is often transient, and over in a moment. Witnesses are seldom called, and sometimes cannot be had. For the most part, there are but few; so their evidence must be in hazard of vanishing in a very little time.

THE

THIS evidence therefore could not be required by the law, to secure the subject in the most valuable of their privileges, on which all others depend. The law has provided another security; the *possessio status* is what every one has reason to rely upon, and to rest secure, that the law will protect him in it, and will not allow him to be turned out of it, unless the clearest evidence is brought, that originally it was founded on falsehood and imposture.

It has been made a subject of dispute, upon what this *possessio status* is founded? For my part, I can see no other foundation for it, but the acknowledgement of parents, supported by the *fama consentans*, or habit and repute of the place of the birth, where-ever it happens. If a child is born in a foreign country, and constantly acknowledged by the parents as their child, and this not contradicted, but uniformly admitted by every one in the country where he was born, this must, in the nature of the thing, be sufficient to establish the presumption of filiation. It is certain, that, of all crimes, the *suppositio partus* is the most difficult to be perpetrated, and the most easy to be discovered; where-ever it is attempted, it cannot fail that some
circum-

circumstances will occur to create a suspicion in the country where it happens ; and where no vestige of suspicion occurs, the child must be held to be in possession of the *status* in which he has been placed by his parents.

The *prescriptio status* is by itself sufficient to relieve the possessor from bringing any evidence that may have perished by length of time. The evidence of so transient an act is, from the nature of things, liable to decay as time advances, by the death of witnesses, failure of memories, and other accidents : But as it decays, the presumption of law, founded on the length of possession unchallenged, does gradually increase to supply its place, and to protect the possessor from suffering by such unavoidable misfortunes. Did not the law stand so, no man could be secure against challenges brought to strip him of every thing that is valuable in life, at a time when, from the course of nature, the positive evidence of the fact must be gone.

To apply this to the present case, great pains have been taken to imprint every one who was in France at the time of this birth, and to learn the general belief which was held in that country, no less than twenty

witnesses have been examined, who all declare that they never heard it doubted in that country. Nor have the pursuers, in all their laborious researches, been able to discover any one witness who could aver the contrary.

NOTICE has been taken of rumours raised in this country to the prejudice of the defender and his brother, very early after their birth; and indeed, if these rumours had been founded on any information from France, they might merit attention. But that is not alledged; they are founded on pretences, which now clearly appear to have been false and groundless; as particularly, a forged letter put into the hands of the Duke of Douglas, as having been wrote by one Count Douglas in France, alledging the children to be supposititious; and a discovery said to have been made by the Countess of Stair to the same purpose. But these have been both refuted, and are now given up as false. The letter was discovered by Count Douglas, the supposed author; and Lady Stair did, in the most solemn manner, deny the aspersions imputed to her, with great indignation against those who had raised them.

ANOTHER

As the groundless impression flattered up by the same means was founded on the age of Lady Jane Douglas, as if she could not be considered a child, either she had entered into the twentieth year. But this is now, it is impossible to say, with any body. It is a very common error, as the English proverb expresses, every woman is capable of a hundred years. It is not the precise year or the age, but the health of the body, that determines that capacity. Two or three years, whether before or after fifty, makes no difference, if the body continues; and it is easily proved, that they continued with Lady Jane in a regular manner, not only during her pregnancy, which proved this, but also in many years after it, and that she continued in the vigour and milkiness of youth, till she was fifty, and the decline of life.

It is evident, however, that the argument, founded on the age of Lady Jane, and the observations here made, is not sufficient to establish the Duke's right to the succession, either by the common law, or by the Statute. While the Duke's age is a question, which we are therefore not to determine, the Duke's age would not be a sufficient objection to the

powerful family has a view to the succession, to which the child, by his birth, has a preferable title. Such rumours never gained any credit, except with the Duke, who was some time deceived by those who had nearest access to him. They were despised by every one who had no interest to promote them; and accordingly, after the Duke had been moved by false suggestions to withdraw his sister's annuity, his Majesty was graciously pleased to interpose, as the common father of his people, and to bestow upon her that relief for the support of herself and children, which her brother had been misled to deny her. Will it be said, that the children, to whom his Majesty showed such paternal goodness in providing for their education, as descended of a noble family, were habit and repute in the country as impostors, and held to have no connection with that family, whose merit recommended them to his royal protection?

And surely, it cannot be competent to the pursuers to controvert this *possessio status* in the defender, after they have neglected for so long a time to bring any action to interrupt it. Had they believed there was any truth in such rumours, it was certainly competent to them to have brought evidence thereof

thereof as soon as they got information; and that even without the late Duke's concurrence. But no such thing was attempted, as they appeared to deserve no credit. The defender was left in quiet possession of his *status* for a long track of years, until at last they thought fit to raise the process now depending.

The defender, during all this time, had no remedy but to continue in the possession of his birthright, which remained for so many years unchallenged; he could bring no action to declare his birth. Such action is not known in law; nor was ever raised in any case, so far as I can discover. It does not appear, what parties could be called in such action, so as to make the decree an *actum et factum*. He has no remedy but to remain in possession of the *status* in which he was born, until a challenge is brought.

The pursuers have brought their challenge at such a distance of time, as it must be presumed, that the half of mankind are gone who were alive at the time of his birth, and to whom the circumstances could be known. The defender, at this distant period, is called upon to prove, and to explain every circumstance relating to his birth, and to the whole conduct

conduct of his parents, and their friends and attendants, he has excused, and sublequent thereon, and the facts of the purifiers arguent it seems to be said on this, that he has not only explained every one of those circumstances, and that they have been able by strength of imagination, and force of ingenuity, exerted to a higher degree than was ever before known in any case, to figure circumstances, to create some suspicion as to the conduct of his parents, which he has not brought evidence to remove. If this manner of arguing is allowed, it is not easy to say who shall be secure against a challenge brought at a distant time. It supposes the law to aim itself against the birthright of the subject, and to render the rights that ought to be held most sacred, the most precarious and uncertain. This may affect, not only the present generation, but also posterity yet unborn, who will regret the conduct of the judges that have first removed the barriers, by which their most valuable property was secured. It is in vain, to say that there is taken in securing the liberty and property of the subject, if that which is the foundation of every other right

they

they can enjoy, is to be thrown altogether loose and uncertain.

It has been said, that the purthers argument will not suit many of the present generation; they are generally born in this country, and their faith is well established by the acknowledged facts of all their relations and connections, that they can be in little hazard from such inquiries.

But as it is not easy to point out what hazard may arise, even to those who think themselves secure, if all hope is given to imagination, and conjectures and suspicions are to be substituted in place of evidence; so it is to be hoped, we will not make this our concern to our country only, but the contemporaries whom we inhabit. How many British subjects are now in such a situation, that their children are now born in distant countries, very remote from Great Britain. His Majesty's dominions are now so widely extended, over a large part of the globe, that many thousands of British children are now born in colonies in America, Africa, the East Indies, and many other remote parts of the world, and many of these children grow up, and are daily increasing in their numbers, without ever seeing their parents, or their country. They grow up and settle there, and labour on their plantations, and in the mines, and in the

moving from place to place as their circumstances and occupations may require. These inhabitants in the colonies are daily increasing in numbers, and may, in course of time, be nearly equal to those in the mother-country. They are no more careful than others to call witnesses to the birth of their children; nor, if they did, could they be able to preserve them in life for any track of time. Their children depend upon the general security which the law has given to all mankind, that they are intitled to possess the state in which they are placed by their parents, and acknowledged by the voice of the country where they were born.

If the birth of such a child should be challenged after he comes to man's age, upon the the devolution, perhaps, of an opulent succession, would he be obliged to answer such questions as have been put to this defender, with respect to the house where he was born, the persons present, the visits that were paid to his mother, every step she moved during her pregnancy, and after the delivery? Or, would he be obliged to account for every part of her conduct, why she staid so long in one or in another place; why she told a thing to one person and not to another, &c. or, would

would his failure in giving evidence of any of those circumstances which happened before he was born, be urged as an objection against the birth? Or, would any facts be laid upon rumours which had been raised in Britain, possibly by the friends and dependents of a family who was next in succession to the estate, and anxiously wished to have him removed from the competition, even if the origin of these rumours could not be traced: far less when they are traced, and appear to be founded on false allegations and false suppositions, void of any foundation in reason or in truth?

If such proceedings were to be allowed, the half of the subjects might soon be rendered destitute of their birthright. But as they have never been allowed in the laws of any other country, it is hoped they shall not be introduced with us; but the legal security of the most valuable privilege shall be transmitted to future generations, as complete as it has been enjoyed in former times.

Is the argument upon the proof in this case the natural order seems to me to have been inverted. Without attending to the unquestionable evidence of the pregnancy, care has been taken, in the first place, to mis-

fect

fler up every difficulty which imagination could suggest as to the circumstances attending the delivery; of which, by the death of witnesses, it is impossible, at this distance of time, that one half can be proved: And then the pregnancy has been slightly passed over as a point immaterial and insufficient to overbalance the suspicions moved to the delivery. But in order to a fair investigation of the case, I apprehend we ought to take the fact as it stands; and first inquire whether there is a full and convincing proof of the pregnancy, and then consider the evidence of the delivery, which is naturally connected with it.

As to the pregnancy, I must bid adieu to all judgment of evidence, if there is not an irrefragable proof brought of it in this case. It is not by one or two witnesses only, which might have been sufficient *pro luctu temporis*, but a connected proof by no less than nineteen several witnesses who depose to the many evidences of pregnancy they observed during Lady Jane's abode at Aix la Chapelle, at Leige, at Rheims, and the several places through which she passed during that period. They are persons of credit, and intirely disinterested in this cause. They could not, if they had inclined, have con-

fessed

conspired to invent the different gradual appearances which they relate in the several places and periods of the pregnancy, so as to be consistent with one another; and therefore it is impossible to avoid giving credit to what they depose.

AND as to the possibility of the witnesses being deceived by appearances, *obj^d*, I think it is hardly possible, that so many different witnesses could have all concurred in a deception, as to the various appearance of the pregnancy throughout the different stages of it. Next, There is one appearance in which there could be no deception, *viz.* the motion of the child felt in the belly, which has been deposted to by Mrs Glis's, and is proved to have been also attested by Madame Tewis at Aix-la-Chappelle, and by Effy Caw, one of Lady Jane's chamber-maids. As these two last witnesses died before the commencement of this action, I have no doubt, that the evidence that is given of what they declared while in life will be held as good evidence: it is the best that can be had, and it is owing to the pursuers that there can be no better. And as to Mrs Glis, to me, she appears to have given the strongest evidence of distinctness and integrity that ever I observed in any wit-

ness: She has been four times examined in this question; first before the jury in the service, thereafter twice before commissioners appointed by your Lordships, at the suit of either party; and, last of all, in the beginning of this session. As it appeared to the court, that her evidence was very material, it was proposed from the bench, that she should be examined in presence, that your Lordships might have an opportunity to judge of the manner in which she emitted her testimony. The examination continued for two days, when she was obliged to answer an immense number of questions put to her by the pursuers, not with a view to discover more of the truth, but to lead her, if possible, to contradict some parts of the evidence she had formerly given. She answered every one of them in so satisfying a manner, as gave me the fullest conviction that every thing she has deposed is most strictly agreeable to truth.

As the proof of the pregnancy seems to be irrefragable; so it appeared in the same light to Mr Andrew Stuart, the pursuers agent, who acknowledged to Mr Murray at Leeds, in presence of Sir William Stewart, "That he had all the proofs in the world of
" Lady

“Lady Jane’s pregnancy, but none of her
“delivery.”

It has been said, that though the proof of the pregnancy is very strong, yet it is not absolutely complete; and therefore ought not to be sustained in this case. But this is directly contrary to the rules of law already laid down. If the evidence brought of the pregnancy is as strong as could be expected at this distance of time, were it not half so strong as it is, the law will hold it as complete. The law supplies the defect of evidence from the length of possession of the *status*, where the challenge is long delayed, else no mortal could have any security against such challenges.

In the present case, it appears to me impossible for any one, who reads the proof, to entertain a doubt of the pregnancy. I must believe, that when Lady Jane undertook the journey from Rheims to Paris, she was big-bellied, so heavy laden, that people who saw her coming up and down stairs could not fail to observe it without being told, as appears from the proof; and the question is, What was her errand to Paris? Is she going to buy children from the poor people there? Or is she going to lay down her burden?

Every

Every one will make the answer for himself. For my part, I am of opinion, that the evidence of the pregnancy, when it is so convincing, is of itself, *post tantum temporis*, a presumptive evidence of the delivery, as it is not pretended that any miscarriage happened. When a pregnancy is carried to the last stage, it must result either in a miscarriage or in a delivery, if the mother does not die before the time; and therefore I cannot have any doubt, that if Sir John and Mrs Hewit had been gone before the action commenced, as well as the other witnesses to the delivery, the pursuers action must have been dismissed upon the proof that has been brought of the pregnancy. The positive proof by witnesses must necessarily fail and decrease by length of time; and the law would be deficient, if it did not interpose by fortifying the presumption which naturally arises from the best proof that can be had at the time when the challenge is brought.

There were Sir John Stewart and Mrs Hewit were both alive, and have been examined by the pursuers in this cause, and they have given the most distinct testimony of Lady Jane's delivery in the house of Madame le Brun at Paris, upon the 10th of July 1748.

They

They have firmly persisted in giving the same account upon oath after various examinations, which they have undergone at the solicitation of the pursuers. Mrs Glais concurs with them in every relative circumstance that could consist with her knowledge. The oaths taken by them are confirmed by letters written by Mrs Hewit to Mrs Glais and Eliza Caw, whom Lady Jane had left at Rheims, some of which are produced and others deposed to. The letters could not be contrived for the purpose: They were not designed to be seen; nor could it be foreseen at so distant a period that they would tally with the proof now adduced.

WHAT is now opposed to this evidence? It is said, that Sir John was the contriver of the fraud, and that Mrs Hewit and Mrs Glais were *passive instruments*; and that they differ in the accounts they give of the fact; and therefore none of them are to be believed.

The first objection founded on their accession to the supposed crime resolves into a *passive instrument*. If Pierre La Marne and Medame de Baum had been alive, and added to give evidence, the same objection would have met them as well as every other witness who had been present at the trial: and for motives

into this, that wherever a birth is challenged, no witness present can be admitted, because presumed to be all *socii criminis*. The pursuer is intitled to disqualify them merely by his own averment.

WITH respect to the discrepancies alledged betwixt Sir John and Mrs Hewit, &c. they appear to be no other than what must arise from the natural failure of memory after a distance of time. To complain of such discrepancies, is to complain that the memory of man is formed as it is; that impressions decay after a lapse of time, and that in circumstances immaterial, they decay very fast, as they are little attended to, and take no deep root in the memory; and as this happens in every age, so it is much more remarkable in the advanced stages of life to which Sir John and Mrs Hewit had attained before they were examined. It would be next to a miracle, if persons of that age should concur exactly in the minute description of every little circumstance that had occurred sixteen or twenty years before. It could not happen without a previous concert; and therefore, in my apprehension, such discrepancies do not derogate, but rather confirm the truth of what they depose.

AN additional evidence also occurs from the death-bed declarations of Sir John Stewart and Lady Jane, who, with her dying breath, commended her son to the Providence of God, and declared her firm belief that he would take care of him. This kind of evidence is of little weight with many; but I own, it has always appeared to me in a different light. Notwithstanding the progress of infidelity in this age, I take it to be more superficial than real with respect to the disbelief of a future state. I believe there are few so hardened in their disbelief, as to consign their bodies to the grave in a thorough security of their future annihilation; or, at the last period of their existence, when every other being is excluded from their view, to dare to deny their Creator, the sole arbiter of their future happiness or misery, as they are plunging into the dark abyss of eternity. These things surpass my belief, even where infidelity takes place.

But, in the present case, it is not alleged that Sir John ever showed any appearance of infidelity or disbelief in religion. And, though we are told that Lady Jane, few instances have occurred, where such evidence could be a given of a genuine and deep-rooted piety, as it is where

where it hath been so much put to the trial. A lady of her high rank and education reduced by misfortunes to a state of the utmost poverty and delication, in want of bread to feed her children in the poorest manner, loaded with contempt and neglect, cast off by her brother and all her friends, and her husband unable, by his situation, to give her any assistance; yet, in this dismal state, she never loses a sight of the goodness of divine Providence, and an acquiescence in his disposal, which she believes to be the wisest and the best. This appears from all her letters that have been recovered, which breathe nothing but a firm reliance on God, and resignation to his will. A piety that stands the test of such affliction, cannot be suspected of disguise; nor can I believe that a person habitually impressed with these sentiments, would, after the most solemn approach to God that religion admits of, and when placed in the immediate view of death, which followed in a few days after, would at that awful period, aver a falsehood in his presence, and in her last moments call upon his Providence to give success to her unpardonable crime, and to perpetuate the consequences of her guilt to share her in the face to all eternity.

If any one can believe these things, they may; I must own they are to me inconceivable; nor can I avoid, for the same reason, laying stress upon Mrs Hewit's testimony; she is proved to have been a person of strict religion and piety. She lived long in great bodily distress, and under a near prospect of death. She underwent several examinations, and always gave the same account of this birth, and adhered to it down to the last moments of her life. It does not appear to me that she has declared any thing that is false; though she may have fallen into many inaccuracies in the great number of questions that were put to her; which is no matter of surprise, considering her great age and infirmities, and the distance of time that has elapsed from the period at which the facts happened.

There is another chain of evidence that must weigh even with those who do not rely much upon the check arising from the impressions of a future state. A long series of letters which have been recovered, from Lady Jane to Sir John, to the number of *fifty seven*, and excerpts from above *a hundred* more, with sundry answers sent to her by Sir John, in which every sentiment of their hearts is discovered to one another, in times of great

poverty and affliction, which was chiefly owing to the existence of these children, by which her brother was irritated to withdraw her annuity, and she had no fund left to afford them necessary subsistence. Had all this distress been originally owing to their own crime, it is hardly possible that some glimmering of the truth should not have escaped throughout so long a correspondence, which was not expected to be seen by any other eyes but their own; yet not the smallest vestige of that kind appears: No repining word against any thing in their past conduct, as the occasion of their distress: No complaint of the demands arising from the expence of the children; but, on the contrary, their whole concern taken up about them alone. Every thing that befalls them carefully communicated by Lady Jane to Sir John, with all the affection of a most tender parent. When any thing ails them, she is robbed of her rest and ease. Her life is bound up in them; and accordingly, upon the death of the youngest, she lost her spirit, broke her heart, and died soon after.

If we could see into the secret thoughts of mens hearts, and discover their inmost recesses, no doubt could remain as to their motives.

tives. Nothing can come nearer to this than the discovery that has been made: Every letter that passed between them, which they believed were never to be seen, and every word that passed between Lady Jane and her waiting maid, with whom she lived in the most entire confidence. This appears from Mrs Glafs's oath when examined in your Lordships presence. A question was put to her from the bench for that purpose, and she deposed, that she never heard Lady Jane, Sir John, nor Mrs Hewit, repine at the expences occasioned by the children; nor heard any expression drop from any of them, nor saw any thing in their conduct, that led her to suspect the truth of the birth. The restraint which the pursuers must suppose, to make this uniformity of conduct during a course of years agree with their hypothesis, is inconsistent with nature. This is a real evidence against their plan, which I am not able to resist.

It has been said, that the whole account given by Sir John of Pierre la Marre, is now given up by the defender. Sir John said he was a Walloon surgeon, whom he had seen at Liege in the year 1721, and was introduced to him by Colonel Fontaine; but the La Marre

now

now discovered was a surgeon in Paris, and was no Walloon, but a Frenchman; nor could he have been introduced to Sir John at Liege in 1721, as he was then but ten years old.

BUT the only mistake into which Sir John seems to have fallen in this account is with respect to the year in which he was first made acquainted with La Marre; which certainly could not be the year 1721, but must have been at some later period, when Sir John happened to be abroad. This was a natural mistake for an old man to fall into, who had been frequently abroad, and did not distinguish exactly the several periods of time when he met with one company or another. But there is no reason to doubt, that Sir John has been in the right in the other particulars; that he has been introduced to La Marre by Colonel Fontaine, though in a later year than 1721. We see by La Marr's books, that there was a connection betwixt him and Colonel Fontaine, which makes this account very probable; and the pursuers themselves fall into a mistake, when they blame Sir John for calling La Marre a Walloon. He was born at *Montreuil sur Mer*; which, though locally in *Picardy*, lies upon the

the borders of *Artois*, one of the Walloon provinces; and, as Walloons are so named from their language, it was as natural to call him a Walloon, as to call one a Yorkshireman, who had been born on the northside of the River Tees, which separates that county from Durham.

THE only error therefore, in Sir John's account of La Marre lies in the time of his first acquaintance with him; which was no extraordinary thing in a man of great age, who had been so often abroad, and, being called upon in a hurry to answer in court, a vast number of questions, without any previous notice, might easily mistake one year for another. It does not appear to me, that this error can have any effect upon the cause; as there is full evidence brought who this La Marre was, and of the occupation he then exercised in Paris. It is of no moment to the question in issue, whether Sir John became first acquainted with him in the year 1721, or in any later year.

AND the evidence, on this head, appears to me to connect it as to give full conviction, and still the more, that a great part of it came to the knowledge of the defender's doctrs by mere accident, when they had no
view

view of making such inquiry. In a conversation betwixt the Prince of Turenne and a French physician, the Prince told him, that his surgeon Mr Menager was acquainted with this affair. Mr Menager being called upon, gives a full account of La Marre, with whom he had been particularly acquainted for a great many years : That he was much employed as an accoucheur in Paris, though not privileged, which was probably the occasion of his keeping his lodgings secret, as mentioned by Sir John ; and particularly depofes, that about sixteen or seventeen years before his examination in 1764, La Marre had told him, that he had delivered a stranger Lady of quality of an advanced age of two male-twins, one of whom was very delicate, and entrusted to his care : That the Lady had come from Rheims to Paris ; and this was her first delivery : That La Marre had a connection with Madame le Brun, who kept one of the lying-in-houses, to which he recommended those under his care : That this happened in the months of June or July ; and it must have been in the year 1748. It could not be in the year 1747 ; because Mr Menager was then along with the army.

THIS

THIS is confirmed by Madame Granette, La Marre's sister-in-law, and by Mr Simoneau, and by Mr Giles, another surgeon to whom La Marre had also communicated this affair. Giles gave precisely the same account of it with Menager, in his first conversation with Messrs Morand and Moreau: He told distinctly of the lady's being delivered of twins in the house of Madame le Brun; and that La Marre had the care of one of them, who was at Menilmontain; and this declaration was taken down in writing at his sight.

BUT, before he was examined by the commissioners, his memory appears to have failed as to some of the particulars, though he found himself still obliged to recollect the general story of La Marre's having told him, that he had brought to bed a foreign lady of distinction, of whose child he had the charge, and reckoned, if it lived, it would be worth a great deal to him.

THE like accident appears also to have happened to Francois La Marre, the brother of Pierre the accoucheur. When he was first questioned upon this affair, he told the pursuers doers, as well as the defender's, that his brother was acquainted with a Madame le Brun, who lived in the Fauxbourg, St Germain;

Germain; but he afterwards thought fit to retract this upon his examination. Some influence would appear to have had the same effect on the memories of those witnesses, that was ascribed by the ancient poets to the river *Lethe*.

OTHER evidence, however, remains that cannot be brought to dissemble or falsify; an article written by Lady Jane's own hand, in her pocket-book, bearing that Sir John had wrote to Monsieur la Marre in September 1749; and letters that were found in La Marre's custody after his death, mentioning the name of *Stewart*, which were burnt by his widow, as appears from a *proces verbal* produced by the pursuers. This pocket-book and letters could not be framed with a view to assist the defender's plea, and strongly concur to support the connection deposed to by the above witnesses.

AND this connection seems to be put out of doubt, by the discovery which has been made of Madame Garnier, the nurse of Sholto, which also came out in an accidental manner. The account she gives upon oath agrees in so many circumstances with the case before us, that it seems impossible there can be any mistake in it: She says, she received a new-born

born child from Pierre la Marre; and that he paid her the monthly allowance agreed for regularly as it fell due: That she nursed the child in the years 1748 and 1749: That it was a foreign child, and one of two twins, both males: That the linens and laces were made after the English fashion: That the child was visited by two gentlemen, one of whom spoke with a foreign accent, and was supposed to be the father: That the child was remarkably puny and weak when first brought to her, but grew stronger by degrees under her care: That when he was taken away, she was told he was to be carried to a distance.

THESE facts are also confirmed by the testimony of Madame Boucaut, who swears that the child appeared to be newly born when brought to be nursed, and that it was very puny and delicate, of which La Marre told her the reason, *viz.* that it was a twin: She also gives a description of one of the gentlemen who came to visit the child, very like to Sir John Stewart, and she declares, that Madame Garnier nursed the child for sixteen or seventeen months.

THESE things give me full conviction, that La Marre was the accoucheur, and that Garnier was the nurse of Sholto. It is all the

evidence that can be had at this distant period of time, to which the pursuers have thought fit to delay their challenge; and it would have been no surprize if there had not been so much. I am not moved by the minute discrepancies which have been suggested by the ingenuity of the pursuers counsel, betwixt the circumstances told by Menager and Giles, after he had resolved to vary his first declaration; or, by Sir John and Mrs Hewit, such as, with respect to the precise distance betwixt Garnier's house and Paris; whether she was previously bespoke by La Marre before the child was given to the nurse or not; whether her husband was a quarrier or a farmer, &c. These, and many other critical observations, with the answers to them, have been over and over again laid before your Lordships; and to me they prove nothing but what I always knew, that when an inquiry into facts is delayed to a distant time, the memories of witnesses, if honest, and not in concert, never fail to differ in minute circumstances, which make no impression; and any darkness arising from such discrepancies must be constructed against the party who has delayed to bring the challenge, and not against the defender, whose birth-right has, for all that

that time, remained unquarrelled, and might have found evidence to remove and explain the difficulties, if the challenge had been brought in due time.

It is easy for me to conceive, that persons advanced to the last period of life, as Sir John Stewart and Mrs Hewit were, would find their memories deficient in many circumstances. But it is not easy to conceive, that such a coincidence of circumstances should occur, as have appeared from the oaths of Monsieur Menager and Madame Garnier, and the other witnesses who concur with them, unless the accoucher of Lady Jane and the nurse of Sholto had been truly the very persons described by Sir John and Mrs Hewit.

The pursuers have broached a very extraordinary scheme in order to destroy the evidence of Madame Garnier: They will not allow that Sholto was in the possession of Sir John or Lady Jane, until he was bought from Saury in November 1749. This scheme appears to me to be absolutely incredible. Had a *falsificatio partis* been intended, and one child been actually bought in July 1746, as the pursuers suppose, what could tempt them to give credit to a story told of two children, when they

they had neither got nor knew of the second for sixteen months after? Yet, we see Lady Jane immediately wrote of the birth of her two sons to all her friends, to Lady Charles Ker, to Lady Mary Hamilton, to Mrs Hepburn, to Madame Lewis, and to Mr Patrick Haldane. I am not able to persuade myself that this could have happened, if Sholto had not then been actually existing and in her hands at the time; or, that she would have desired Lady Wigton to visit the child in her way to Paris, and send her a particular account of his health, when no such child was in being.

A strong objection has been laid upon Le Brun's house, that it has not been pointed out by the defender. I see no consequence from this. There may have been hundreds of widows living in Paris in the year 1748, whose houses could not be pointed out at this day. It is agreed, that Sir John and his whole company staid for nine days at Sedan in their way from Leige to Rheims; and though Sedan is but a small place in respect of Paris, yet it has not been in the power of either party, by all their inquiries, to discover the landlady with whom they lodged there, nor any person who had seen her.

AND as to what the pursuers undertook to prove, that there was no person of the name of Madame le Brun living in the Fauxbourg St Germain in the year 1748: They have apparently failed in it; for, by the proof it appears, that there were no less than four or five Madame le Bruns who lived there in the year 1748; although none of them are now to be found, nor any of them inserted in the police-books. This is full evidence, that, in such a distance of time numbers of people, who actually had their residence at Paris, may disappear, so as no accounts can be had of them; nor is there any mystery in the thing. What number of widows who lived in the year 1748, are, since that time, either dead or removed to other places? and is it a wonder, that all their friends and acquaintances cannot now be discovered, so as to find out the accounts they have given of their several lodgers? Or can it be pleaded, as sufficient evidence, that one did not lodge there, because such discovery has not been made? This would be plainly to invert the rule of law, and to oblige the defender, who has been so long in possession of his state, under the highest penalty, to bring a proof which has now become impracticable

impracticable through the delay of the party who is insisting to divest him of his birth-right.

As to Godefroy's books, I can never think that a blank article can be proof of any thing, without further support; and that which is offered in this case from the oaths of Godefroy and his wife, who have adventured to fill up this article from memory, at the distance of seventeen years, has no weight with me; as I do not think such particularizing falls within the compass of any one's memory, far less of two innkeepers, who, as they acknowledge, have, during all that time, been in constant occupation by new returns of company in the way of their business, in so much, that all the rooms of their house, which contained no less than nineteen beds, were generally full, from the beginning of the year to the end of it. Such extraordinary recollection I cannot lay any stress upon; especially as it happened *ex post facto* beyond what occurred to them on their first examination; and, when I consider the dependence such innkeepers are under to the officers of police employed by the pursuers, who have it in their power, on so many occasions to ruin them, this tale, which is contradicted by the other evidence, appears to

to me in no stronger light, than a story told by a slave at the instigation of his master.

AND as to the two enlevements alledged of the children of Mignon and Sanry, I take the Mignons to be clearly perjured. And the story told by the Sanrys, to be disproved by the Curée de St Laurent's letter to the lieutenant of police, and the record entered in the police-books in consequence thereof; from which it appears, that this enlevement did not happen till the end of December 1749, a month after Sir John and his family had left Paris, and set out for England; so that they could have no concern with it.

Upon the whole, I cannot have any doubt that the defender is the son of Lady Jane Douglas; and I should be sorry to see a precedent established by this court, that might tend to shake the security of the birth-right of the subject.

L O R D

LORD GARDENSTOUN.

THIS is certainly a very extraordinary case; it is a very compassionate case, in my opinion, and a very singular case, in this respect, that the pursuer, I mean the principal pursuer Duke Hamilton, has nothing to gain, and the defender has every thing to lose.

I confess, I entertained an opinion, that the grounds of law and justice, upon which this great question ought to be determined, were so clear and certain, that there would hardly be any room for difference in opinion, as to these points, among the judges of this supreme court: But in this, I now apprehend, I may have been mistaken; because your Lordships have already delivered different opinions as to the principles of law and justice on which this important decision ought to be founded.

I am sensible, that one in my situation has reason to be jealous and distrustful of his own prepossessions. I have laboured to form an impartial opinion, and to guard myself against

all prepossessions. I am clear, for the satisfaction of my own mind at least, to declare, that the opinion I am now to deliver would have been my opinion, if this case, with all its circumstances, had been sent from Japan, or any remote nation upon earth, to be judged and determined here; and, without any further preamble or going about the bush, I declare my opinion for the defender in this cause.

I am not to beat the wide and almost boundless field of evidence and argument contained in the bulky volumes before us; I propose only to state such circumstances as appear to me to be material on either side, and such arguments as have determined my own opinion.

BEFORE I proceed to touch the proofs, I will take the liberty to offer some few preliminary observations, which seem to me of great importance in judging this cause, and in balancing this evidence.

I must freely say, that I think it is a capital error to hold, that, in judging this cause, there are no principles of law, no rules of evidence to guide or direct us: That it is a mere question of fact, and we must determine according to our several apprehensions

of the most probable or convincing evidence on either side. In all questions of fact, especially in a question of this nature concerning birth-right, there are certain principles of law, certain rules of evidence, which have been adopted and digested by wise and impartial lawyers for the general security of mankind. These we are bound to regard, and to apply with our best judgment to every particular case; otherwise the rights of men in society will become uncertain; the power of judges will be arbitrary; a door will be open to partial decisions in the greatest as well as in the least interesting questions, and fancy or prepossession may easily get the better of judicial rectitude. If this doctrine shall prevail, that we are not to regard any principles of law, or rules of evidence, in the determination of such a cause, it is in vain that men who are raised to be supreme judges, have been trained with labour and expence to the erudition of law, that they have been taught the various principles and rules which must regulate different cases for the general good, the safety and peace of nations and families combined in society. At this rate, it is in vain that great lawyers and judges have composed volumes, or that we have studied
those

those volumes on the nature and rules of evidence; for one great chapter in every book, or system of law, is upon this subject of evidence *de probationibus*. Knowledge in the principles of law is peculiarly necessary to determine questions of birth-right; and for this reason, it is established in the constitution of this country, that though in ordinary cases services are conducted before juries, and the right of birth is determined by their verdict; yet in difficult or uncommon cases these services proceed under the direction of this court; and in all cases of birth-right, the verdict of the jury is subject to review, and may be set aside by the judgment of this supreme court of law.

I therefore hold it as a sacred part of my duty, in forming a judgment of this great question, to borrow light, as far as I can, from the principles of law formed by wisdom, and received by civilized nations, with no partial view to particular ends, but with a general view to the good and safety of all men in society: And as the foundation of my opinion in the present case, upon many great authorities which I have read, and which have been partly quoted to us, I lay down this proposition, and hold as undoubted, That

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where a person has been acknowledged and entertained as the lawful child of certain parents, from infancy to a state of manhood, where he has always passed by their name, and has been treated by the society where he resides in that character, he cannot be deprived of the birth-right which he derives from this *testatus*, as the lawyers term it, without the most clear and conclusive evidence that he is not the child of the persons who have so entertained and brought him up, but that he is the child of a different father, or of different parents. I agree to what was argued by one of your Lordships, that the defender's service makes no odds in this case; that we sit here as a grand jury, to review the sentence of the former jury; and that we must judge and determine this question on the same principles, and in the same manner as if it had originally come before us. But I do hold this to be a fundamental principle of a right judgement in the case, That the defender cannot be deprived of his birth right, established by acknowledgement of parents and long possession, without the most clear and conclusive proofs. There must be no uncertainty, room for computation of chances, with which the pursuers have entertained us; it must

must not be a dark case; it must be a clear case.

This proposition, which appears to me of great importance in the present case, and in all questions of this nature, seems to be founded equally on the plain principles of humanity, or expediency, and upon the general principles of law and of justice, as well as the particular and direct authorities of lawyers, which I will not repeat from the de-
fender's information.

That it is founded on the principles of humanity, every human breast must feel, when the present case is considered. It is no misfortune to be born in want or poverty of circumstances; the world is all before such men, where to bustle and advance themselves; and in my mind, he is more an object of envy, he enjoys life better, who raises himself by gradual and uncertain steps, he who advances himself to eminence or affluence by his own industry, merit, or good fortune, than he who possesses wealth or rank in the world by mere prerogative of birth. But the case before us is very different from either of these. Nothing in the history of mankind, or even in the recollection of our own times, can more strongly move compassion than to see an innocent child, trained

up from infancy to manhood as the right heir of a noble family and a princely fortune, to see him stripped of these honours and of these rights without any fault or blame, to see him raised on the pinacles of life, and flung like a criminal, upon the hard level of the earth. This affords an object tragical indeed! And I may venture to say, that were the proofs ever so clear, certain, and conclusive, justice cannot inflict a harder stroke, nor can judges, compelled by irresistible necessity of justice, give the blow without feeling the severest pangs of sorrow.

THAT the proofs in such cases must be clear, certain, and conclusive, is also founded in the principles of expediency: But as this has already been well explained by some of your Lordships, I will not enlarge upon this point. It is manifest, public utility evidently requires, that judges adhere sacredly to this principle; the quiet of families, the peace and security of crowns and kingdoms, are interested in it.

3dly, This principle is laid down by the greatest lawyers in all nations, and is strongly founded in justice. All sound lawyers agree in this rule of evidence, that gross frauds, especially if charged against persons of good fame

fame or distinction, can only be proved *indubitis indubitatis et luce clarioribus*. I cannot find English words strong enough to express the force of this maxim. If this rule of evidence holds in defence of a party charged as guilty of any gross fraud, how much more must it hold, where the party against whom the challenge is brought is undoubtedly innocent, and against whom there can be no suspicion of guilt. No lawyer ever disputed, I am confident none of your Lordships entertain a doubt, that this rule of evidence holds universally in another question of birth-right, which more frequently occurs in the world; I mean, in the question of bastardy. Though a man should disown the child or his wife; yet he is held to be the legal father, unless the most clear, certain, and conclusive evidence can be brought, that the child was begotten by a different father; in short, the most convincing proofs to the minds of private men, who judge not by the principle of law, but by their own notions, of what may most probably be the matter of fact, will not serve. There must be an absolute and natural impossibility, that the husband is the father, otherwise he is held to be the father, and the child's birth-right is secure to-

on the same principles of law, expediency, and humanity, which I now maintain. It seems, therefore, to be a rule of law, demonstrably certain, the observance of it, is of the utmost importance to mankind, That he who challenges a birth-right, which has been acknowledged by parents, and possessed for any considerable time by the child, must prove his challenge by unexceptionable, clear, and conclusive evidence. The *onus probandi* not only lies upon him, but the nature of his evidence must admit of no ambiguity or uncertainty. The laws of this, and all civilized nations, founded on wise and general views, for the quiet and security of families and individuals, give much stronger and greater effects to innocent possession, even of the rights of other men. Undisturbed possession for forty years, by the laws of this country, will transfer the right of any man's land-estate to the possessor. The various short prescriptions of three, five, ten, and twenty years, are founded on the same principles. *De facto* possession gives a man absolute right to the rents and profits which he reaps from another man's property during that possession; and by the laws in France, in the case now under consideration, of an alleged supposition

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tion of birth, a man's birth-right cannot be challenged after twenty years possession, tho' it could be disproved by the most clear and conclusive evidence. It has been argued indeed, and some of your Lordships seem to regard the argument, that, in this case, the possession has been interrupted. But how has it been interrupted? By surmises, doubts, and suspicions artfully raised. The origin of these suspicions has been traced by the clearest evidence. I do not understand this sort of interruption; as a judge, I cannot regard it; I think it can have no effect in law. God forbid, that the rights of possession, undisturbed by any legal act, should be affected by interested or malicious suspicions, or by mere surmises of any kind! If this sort of interruption hold in the present case, it must also hold in the other species of controverted births, which I have mentioned in the case of bastardy. There is no sensible distinction between those cases, no solid ground to vary the principles on which they are to be decided. Since the beginning of this wicked world, it has often happened, that the real, the natural father, and the legal father, are two very different persons. The one may have been a King, the other a

priest; the one may have been a lord, the other a squire of very humble note. It has much oftener happened, that misguided jealousy, or malicious scandal, has blotted the fame of innocent ladies. But without reasoning upon this matter, would any court of justice, or shall we allow parties to rake up surmises and doubts, the talk of idle men at their cups, or of women at their tea-tables, to take away or diminish the legal effect of public possession, or the acknowledgement of parents in such cases?

HAVING thus explained my thoughts at some length, upon this important proposition, concerning the nature of legal and sufficient proofs in such cases; I have only two other preliminary observations to offer, which I shall touch with greater brevity.

MY *second* proposition I lay down, without argument, as it seems to be self-evident and incontestable. It is this, That as this challenge of birth-right was not recently offered, but is now attempted at the distance of so many years, common justice will not permit that the defender suffer any disadvantage by this delay. Every dark or uncertain circumstance must be favourably interpreted for him; and most particularly, we must hold,

I hold, that the evidence of what persons, who are now dead, reported when alive, shall be regarded as living evidence; and, under this proposition, I hold, that Madame Tewis, Effy Caw, and Pierre la Marre, are to be regarded as living witnesses, in so far as there is credible testimony of what they said when alive, touching the pregnancy or birth in question.

I have a *third* preliminary observation to offer, which also seems to me of great importance in forming a right judgement of this cause. I see nothing done on the part of the defender, no illegal or improper step taken to hurt his defence, or lessen the credit of his evidence: But, on the other hand, I see a most weighty and solid objection which reaches a great part of the proofs for the pursuers. In short, the Tournelle process, and the Monitoire, were, in my opinion, most improper and illegal proceedings. But, before I go any farther in my observations upon this matter, I must avow, that I feel myself under the strongest calls of truth and candour to declare, that I do not blame Mr Andrew Stuart for these proceedings. I am convinced that he acted from principles of integrity and good intention. I do regard and esteem

esteem him as a man of honour. But what could he do in such circumstances as he was engaged in? Employed by Duke Hamilton's tutors, he went over to Paris, an utter stranger, and uninstructed in one word of their language; though being of quick parts, he soon acquired it. He was not then in a situation to plan measures, or to prosecute inquiries by his own direction; and was therefore obliged to commit the whole management to French agents and lawyers. To magnify their merit, and from manifest views of profit to themselves, among other unjustifiable measures, they advised and carried on this Tournelle process, which can be considered in no other light than as an undue practice on the witnesses. In this country, a similar management would destroy the credit of any witnesses, and draw the severest censures on the authors of it. This private and partial examination of material witnesses upon oath, by the agents of one party, before a fair and judicial examination by both parties could be obtained, was a manifest mal-practice, and more prejudicial to a fair discovery of truth than such a private examination in this country could have been; because their oaths so illegally taken, and

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under such an unfair examination, were considered in France as judicial oaths and legal evidence, which could not be cancelled. This was an indirect practice, which is always worse and more dangerous than direct wrong. The pretence was, to try and punish Sir John Stewart and Mrs Hewitt. A pretence manifestly false and infected. The real intention could not, in the nature of things, be anything else but to tie the witnesses by oaths to a tale which had been drawn from them under private and partial examination, by interested agents of one party. It is impossible to justify this proceeding, on pretence, that this was a fair trial and examination according to the laws and constitution of France. The laws of France, nor of any other nation would not have permitted such a fictitious trial, if the civil question had depended at the same time before their sovereign courts. The trial was not a fair public trial; it was a contrivance of private agents, to answer most unlawful purposes. In this light were these proceedings considered in this court, and in the *lais rector*. When my sentiments are expressed by abler or wiser men than myself, I chuse rather to use their words than my own. I remember well a strong and significant

significant expression from the chair, when those proceedings were long ago under consideration, "That this Tournelle process " would hang like a millstone about the necks " of the pursuers." And, without pretending to the spirit of prophecy, I do verily believe that it will ultimately prove so. I shall never forget what was said by two great persons upon this subject in a higher court. I well remember these remarkable words: "In " vain are judges wise and upright, if the " channels of justice are corrupted." The channels of justice were corrupted by these indirect Tournelle proceedings. The following words dwell upon my memory distinctly to this day: "I am loath to treat with any " disrespect the laws or constitutions of foreign nations; but this I will say, that if " there was a bridge from Calais to Dover for " the Tournelle to walk over, I would fly to " the *ultima thule*."

THERE never was such a Monitoire seen in France, except in the infamous case of Calas, which proved fatal to an innocent family. In this case, it was plainly calculated to instruct low witnesses what evidence would serve, by minute and unnecessary descriptions of persons, places, and circumstances, and to
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inflame the minds of all people, by declamatory style and false averments, that the crime of supposition was already clearly proved.

HAVING premised these general observations, which appear to me of great importance in forming a right judgement of this cause, I shall now proceed to offer my thoughts upon what seems most material in the evidence adduced by either party, and that with all possible brevity.

FROM the proposition which I have asserted, and I think clearly proved, concerning the rule of evidence in such cases, I infer, that the proper state of the question is, If in this case there is a clear and conclusive proof of the supposition; can I lay my hand on my heart, and pronounce that the proofs are clear, certain, and conclusive? I declare I cannot: On the contrary, I think the proofs are very strong on the part of the defender, and very sufficient to maintain his right.

THE evidence adduced to prove the defender's filiation, if we allow it to be a credible evidence, is as strong and sufficient as can be expected in any such case, where the lady is brought to bed in a foreign country, and the inquiry is made at so late a period. I shall first state a summary of this evidence;

I shall then offer some observations on the force, connection, and credibility of it; and, lastly, I shall deliver my thoughts on the objections to it, founded on the contrary evidence.

It is clearly proved, that Lady Jane, tho' advanced in years, was in that condition which infallibly denotes a capacity to have children. It is impossible there can be a more direct and positive proof of pregnancy, not by external appearances only, which must attend a real pregnancy, though, no doubt, they may be artificial and easily counterfeited; but this pregnancy is directly proved by inspection, examination, and feeling of the person. The actual delivery is proved by two direct witnesses called by the pursuers themselves. Their evidence is confirmed by strong collateral circumstances, deposed to by Doctor Menager, by the nurse Garnier, by Madame La Marre's sister, and by the books of La Marre, which prove an intercourse between him and Madame le Brun. As the gradual progress of the pregnancy is proved, so is the gradual convalescence after the period of delivery. It is proved, that Lady Jane and Sir John entertained and brought up these children as their lawful children,

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and that they treated them, on all occasions, with the most passionate and unaffected fondness. It is proved, (a circumstance of irresistible force), that in their private correspondence for a course of years, they both expressed the most uniform, the most warm and tender concern for these children as their lawful children. It is proved, that the youngest of these children was the very picture of Lady Jane: That she broke her heart with grief when he died: That, in her last moments, she poured forth the most fervent wishes and prayers of a fond mother, and of a pious person, for the defender, as her only surviving child; and that Sir John, in his last moments, solemnly declared and affirmed the truth of the birth.

I shall now offer some observations on the material parts of this evidence.

Mrs Hewitt's direct evidence of the pregnancy is confirmed by other witnesses, of whose credibility there is no just suspicion. The two maid-servants affirm the pregnancy as a matter of fact, upon the testimony of their sight and feeling. It is proved, that they were the persons who put her to bed and attended her at her rising out of it. Field Walker, a person of unblemished cha-

rather, sweats, upon repeated examinations, that she saw her breasts and belly very big : That she shifted her and dressed her : That she found her with live child. It is proved, that Effy Caw gave accounts to the same purpose when alive ; and her evidence is the more credible, as she quitted Lady Jane's service from some displeasure. Other credible persons concur in giving direct evidence of the pregnancy without the least ambiguity. Such are the testimonies of Madame Tewis, Mrs Hepburn, Madame Obain, Miss Primrose, and the Abbé Hibert. I can have no doubt, that pregnancy, like any other matter of fact, may be proved, to a moral certainty, and by evidence which will be a just and legal ground of belief. This I hold upon the authority of our law and of our practice. We have seen various instances of such proofs in cases of women condemned. The inspection and report of skilful persons is credited by the judges. It is the ground upon which they respite execution ; and I never heard of any instance where such reports have been found to proceed on a mistake. The same proof was allowed and received in the civil law ; as we find in the title *de inspiciendo ventre*. An inspection was appointed, and the estate, in
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the mean time, was put under administration for the benefit of the heir *in utero*. If then this matter is capable of a proof, it seems impossible, that there can be a more natural or credible evidence of pregnancy in the circumstances of such a case. When a lady is travelling in a foreign country, her pregnancy may be observed or overlooked by mere strangers. By them it may be forgotten, or faintly remembered, after so great a distance of time: But her attendants, her domestics, her friends, either occasionally contracted or by older connection and intimacy, persons who knew the importance of the birth, would naturally make the closest observations, and hold it in remembrance. Such is the nature of the evidence in this case; and surely it is a credible evidence.

This pregnancy being thus established, gives force and credit to the proof of actual birth. I must transfer it to that article, and hold it as a concurring evidence of the actual birth. The strongest of all natural and rational presumptions is, that a woman who is certainly with child must certainly be delivered, if there is no pretence of a miscarriage; and there is none in this case.

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THE actual birth is directly proved by Sir John Stewart and Mrs Hewit, witnesses called by the pursuers themselves.

THIS direct evidence is confirmed by a series of corresponding circumstances, deposed to by the most credible witnesses, or attested by writings which are admitted to be genuine.

DR MENAGER is a most unexceptionable witness. He is a gentleman of fair reputation; he made the first discovery to Mr Andrew Stuart himself; and, upon different occasions, mentioned the material circumstances to which he has deposed, before he had any intercourse or conversation with the managers and agents for the defender. His evidence is striking. He was intimately acquainted with La Marre; says he was a man-midwife of good skill and practice: That La Marre several times mentioned to him as a singular case, the delivery of a foreign Lady in the 1748 at Paris: That the Lady was advanced in years: That she came last from Rheims: That she was brought to bed of twins: That he expected some time or other to have better payment than he had received: That one of the children was delicate, and was sent to nurse in the country, near Paris,

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and under his charge. This evidence concurs, in every material circumstance, with the account given by Sir John; and as the inquiry is brought, at so remote a period of time, and after La Marre's death, I think it strongly confirms the truth of Sir John's story.

The nurse Garnier's evidence is also strongly corresponding. She says, that about the time which answers to Lady Jane's delivery, a twin-child was brought to her to be nursed: That he was a delicate child: That a stranger, whom she believed to be the father, made visits to him; and that this child was left under the care and charge of La Marre. At this time, she lived in a village near Paris. By Sir John's account, the youngest child Sholto, being, in a delicate and dangerous state of health, was sent to a nurse who lived in a village near Paris, and was left under the care of La Marre: That such a child, answering to the description of Sholto, was kept and nursed by Garnier at this very period, rests not upon her evidence alone; it is confirmed by the testimony of her neighbours. If this child was not Sholto, the youngest twin, it is a thing altogether incredible, that the pursuers, with all the aids of their police, their Tour-

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nelle proceedings, and their *Monitoire*, would have failed to discover the true history of this child, and to make it appear, that he was the child of some other person.

THE evidence of Madame la Marre's sister, confirms the credibility of this evidence, that the child nursed by Garnier was the youngest twin Sholto; and La Marre's books prove, that he was in the intercourse of business with a woman of the name of Le Brun, in whose house the birth happened.

BUT the strongest of all circumstances to confirm the truth and reality of the birth, as deposed to by Sir John and Mrs Hewit, are these: The striking likeness of Sholto to Lady Jane; the affectionate behaviour of the parents on all occasions; their private correspondence, and their dying words.

Is it credible, that so many undeniable circumstances tending to prove the truth of this direct evidence should concur to support a falsehood? Can we believe, that they picked up in the streets of Paris, a child who answered exactly to the description which they had always given of the youngest child left near Paris; and that this child should, in the opinion of every person who saw him, prove to

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be the very picture of Lady Jane? During the whole course of their lives, from the time they brought these children to Britain, they were the objects of their care, and their only consolation in various misfortunes and distresses. It is proved, that on every occasion, Sir John acted as a most affectionate father, Lady Jane as an assiduous and passionately fond mother. It is hard to believe, that they could have kept on the mask so constantly. They say indeed, that Lady Jane could dissemble and play the hypocrite. If we were even to allow that these public testimonies of affection might have been artificial and affected; yet, it seems impossible to believe that this dissimulation was carried on in a *correspondence* *letter to letter* as constant as correspondence. Can I believe that Lady Jane played the hypocrite, when she broke her heart for the loss of her child Sholto? It is impossible to read the description which Mrs McClubbie gives of her affection upon the news of Sholto's death, and to doubt that she acted and behaved in the true and real character of a *genuine mother*. I know what hypocrisy is: It is a public pretence of piety or innocence, to cover private villainy or vice, or deflect the imputation from them. But that a confederate in a criminal

criminal course of life should, in her most private communications with the very associate of her crimes, breathe such constant strains of truth and innocence, such continued expressions of love and maternal fondness for these children, is a thing unprecedented; a thing out of all nature and credibility. Nor can any one who knew Lady Jane personally, or by character, believe, that she could affront Heaven in her last moments by false and dissembled fondness to the surviving child, or by hypocritical prayers in the character of a true mother. There have indeed been instances of real criminals who have falsely professed innocence to the last moments of a public execution, from various motives that might be accounted for. But the circumstances in which Lady Jane died were very different. In her own chamber, in the private bed of death, she was discovered by surprise in the last acts of devotion; and her prayers were directed to Heaven alone, to save and protect her only surviving child. Even setting aside sentiments of religion, nature will not suffer us to believe that this was hypocrisy.

Thus we have a strong connected chain of direct and circumstantial evidence to support the

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the defender's filiation, and maintain his defence. I shall now consider the most material circumstances and articles of proof, from which the pursuers are obliged to maintain a very bold and strange proposition, that all this evidence on the part of the defender is false and incredible.

On this head, I do agree to an observation made by some of your Lordships, that in considering the force of a circumstantial evidence, we are to connect the whole circumstances and weigh them together. But good sense directs, and the nature of things requires, that we first consider well the circumstances separately, before we can put them into the balance, or connect them with propriety; otherwise we shall be in great danger of misjudging, of allowing weight to evidence which is of no moment, or, perhaps, throwing pieces of evidence into the wrong scale. In summing numbers, we must not set down a figure where a cypher should be. In weighing evidence, we must not put a circumstance into the chain or to the balance, which, fairly and solidly considered, is in its nature light, uncertain, or of no consideration. In short, we must fairly estimate every particular before we give it a place in the total evidence; and we must be particularly cautious, lest mispi-

cions mislead us to put a false construction upon circumstances. Like the jaundiced eye, suspicion discolours the natural complexion of circumstances, and we must guard against it in judging.

I have laboured to form an impartial judgement of the circumstances urged by the pursuers in this cause, and I must fairly and honestly confess, that there are some of these circumstances, which, in my judgement, have no solid weight; and there are other circumstances which I cannot treat as trivial or of no moment. I do not sit here to plead causes, but to form a sincere opinion, to the best of my judgement, on all matters before us, and to deliver that opinion with freedom, and without respect to persons or parties. I shall therefore freely and plainly endeavour to state these two classes of circumstances, as they truly appear in my judgement.

THE *first*, and I think the most material article of the pursuers proof, is the evidence of Godefroy's books, as confirmed by himself and his wife. If we give credit to this article, it proves at once, that the whole story of a real pregnancy and of a birth was false. Sir John, Lady Jane, and Mrs Hewit concur, from first to last, in affirming, that she was
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brought to bed on the 10th of July in the house of Madame le Brun ; but if Godefroy's books deserve credit, the fact is, that they all continued to reside in the house of Godefroy down to the 13th of July.

I own I can give no credit to this piece of evidence. In my conscience, I believe it is false or erroneous, when I consider the weight of evidence in the balance against it : And I will give reasons which are fully satisfactory to my mind for rejecting this piece of evidence altogether. In the *first* place, with regard to this species of evidence, the nature of it is not very promising ; nor does it seem to claim the infallibility which the pursuers ascribe to it. A tavern-reckoning at the distance of near 25 years, extracted from books which are clearly proved to be full of razures, inaccuracies, blinks, and confusions. It was material for a just defence and fair trial of this great question, that these books, on which the pursuers found, as containing conclusive evidence of the imposture, should have been produced in court for our inspection. But we owe this defect, among many others, to the memorable *Tournelle* process. These books are confined to the *Tournelle*, and must forever remain there. To be founding on Godefroy's books as evidence,

dence, brings to my remembrance what lately happened: The executors of the noted Mother Douglas brought an action against several gentlemen of distinction, for payment of tavern-bills contracted in her house. We are not to presume that these gentlemen frequented such a house as Mother Douglas's: But even supposing that they took a fancy to go there, we are not to imagine that they would have come off without discharging their reckoning. *Secondly*, The whole evidence for the defender, which appears to me very strong, as I have already stated it, must fall a sacrifice to this single article, if it is true; a degree of credit I can never bestow on these books, nor on the testimonies of Monsieur Godfrey and his wife. *Thirdly*, Michell's book, his *livre de logeurs*, is allowed by the pursuers themselves to be erroneous, though he and his wife swear as positively to the verity of it as Godfrey and his wife have done to their book. Michell's book, as attested by the evidence of himself and his wife, bears the entry of Sir John and his family, at their house on the 8th of July, and that they continued in their house till their departure from Paris. I could never conceive how the pursuers should persuade us, that we must ascribe

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infallibility to Godefroy's *livre de depense*, and yet be satisfied, that the books of Michell, equally attested, are erroneous. It is clear to me, that of the two books, Michell's *livre de legers* has the best claim to credit; for this obvious reason, that, in the bill or reckoning of meat and drink furnished to strangers for a few days, the dates are of no moment. If the articles are rightly stated, neither the land-lord nor guests have any interest to advert, if the dates are stated at all, or if they are accurately stated. But Michell's was a lodging house; and as the payment of lodging is measured by the time, the date in that book is essential. And indeed, I cannot help observing, as a thing very singular in the conduct of the pursuers argues, that, for some time, they persisted in maintaining, that Michell's books were the most credible, and affirmed upon their authority, that Sir John and his family remained in Michell's house from the 3th of July, to their departure from Paris, which they held to be conclusive evidence, that Lady Jane could not be proved to bed in the house of the Countess upon the 14th of July. But it is not necessary to dispute Michell's books, and to set the infallibility of Godefroy's, as

if they were at liberty to dictate what proofs they would have us to believe. This is really a strange sort of reasoning, not unlike the old tricking play of *olds I win, evens you lose*. 2dly, The testimony of both these witnesses is tainted by the Tournelle proceedings. It is quite incredible, that Godefroy should have remembered so many particulars as he mentions, without aid or instruction; and I can pay no regard to Madame Godefroy's testimony for two reasons: 1st, She persevered long, and even in her examination before the Tournelle, in a most credible answer to all inquiries concerning this matter: That at so distant a period, and after such a variety of intercourses in her public way, she could recollect nothing particular concerning these strangers. In so far, therefore, as I find that on the great day of evidence, when she comes to depose as a witness in this cause, she all at once concurs with her husband in many particulars, to confirm the prodigious memory of her husband: I must fairly conclude, that her testimony deserves no regard. 2dly, Madame Godefroy is so far candid as to confess, that the blank article in their books is applied to Sir John Stewart and his family by mere conjecture. She owns, that, when

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she applies a blank article in their *livre de depeuse* to a person, whom she finds about the same time in their *Livre de l'inspecteur*, is a mere conjecture and uncertainty; which is sufficient to discredit the evidence of her husband altogether, who pretumes to swear positively to this application. And this uncertainty of Madame Godefroy takes, from this boasted piece of evidence, the essential characteristic of proper or legal evidence, which requires certainty, and admits of no conjecture, or even probability. *Lastly*, There is another circumstance which takes away all credit from Godefroy's testimony in this matter; he boldly and positively swears, that a blank account in his books, of articles furnished to a company down to the 13th of July, is applicable to Sir John Stewart and his family, and to no other persons. Yet this is the single instance of a blank article in the whole book which he can fill up in this manner, on fair trial, with the assistance of his *Livre de l'inspecteur*.

I have dwelt upon this piece of evidence, because it is the single article in the whole mass of proofs which has any appearance of being conclusive. The rest are detached circumstances of suspicion, rather than evidence;

dence; and these I come now to consider and treat with greater brevity.

THE objection of Lady Jane's age is intirely removed by clear evidence, that she was in that condition which undoubtedly denotes a capacity of having children. The doctors do not differ on this point; they all agree, that women having these marks are undoubtedly in a capacity of having children, without distinction of age. I can therefore just as well believe, that a woman in this condition at fifty may have children, as that a woman at twenty-five may have children. The Roman law says, *Malitia supplet aetatem*. If the natural marks of ability in either sex are apparent, the age is no objection; but persons either under or past the usual age may have children.

THE circumstance that Lady Jane concealed her marriage for some time has been put in the scale against the defender; I think without reason. To conceal the marriage as long as possible, was a prudent and rational conduct, from a fear of offending the Duke and losing her pension; an apprehension which the event proved to be well grounded; for the Duke did recal the pension soon after he got intelligence of the marriage.

It has always appeared to me inconceivable, that Lady Jane's endeavours to conceal the pregnancy, by wearing a hoop and loose dress, should be used as an argument against the reality of the pregnancy. This endeavour was a natural consequence of her unwillingness to discover the marriage as long as she could possibly conceal it from the knowledge of her brother. The popular opinion, perhaps with reason, is, that hoops were first introduced to hide unlicensed pregnancies: That a woman, who wanted to pass a false pregnancy on the world, should use the stratagem of a woman who wants to conceal a real pregnancy, is quite incredible and unprecedented; for, in the numerous cases quoted, there is no instance of this. And indeed, this seems to be one of those circumstances which is misplaced by the pursuers, and ought to be put in the balance of the defender's evidence; for this endeavour to conceal the appearances of pregnancy is naturally an argument that Lady Jane was conscious of a real pregnancy.

The journey to Paris is fully explained, and rationally accounted for. It was proper to leave Aix-la-Chapelle, as the great resort

of the season approached. That they did not wait for the permission, which had been applied for, to lie in at a neighbouring great house, was certainly prudent, lest it had not been obtained, or had come too late; as the season lived at Vienna, and the application was not proposed in proper time. Chevalier Douglas advised them to go to Paris. His advice was good, and thought so at that time: It was followed with all proper caution. They made short journaies, and long rests: They staid at Liege, I think, for five days; at Sedan for nine days, and at Rheims for a whole month.

THAT Lady Jane never called for assistance of persons of professed skill, either at Aix or on the road to Paris, is a circumstance which does not move me in the least. How few of our Scots ladies, even in opulent circumstances, call for assistance, if they hold out well to the last? Some very fine English ladies, who are delicate, and always in a fright, must have the doctor with them every hour of the day: They may think this circumstance odd; but, I am sure, our Scots ladies will not.

THE objection, that Madame le Brun, in whose house Lady Jane is said to have been delivered,

delivered, has never been discovered, seems to me of no great moment. That La Marre was connected with a woman of that name is proved from his books. It is no matter of wonder that she cannot be found in so large a city at this remote period; especially as it is proved, that no aid for this discovery could be had from the records; for by the regulations she could neither be found in the police nor in the capitation-rolls. This is not the single instance of persons who cannot now be discovered, though they undoubtedly existed at that period of time. It is no more a matter of wonder or of evidence on either side, that Madame le Brun cannot now be found, than it is matter of wonder or of evidence, that no trace can be found of the man who first brought the child to Michell's. The coachman cannot be found who drove away the child of Migron. The pursuers themselves now admit, and say it appears from the evidence, that Sir John and his family were lodged in some house different either from "the inn" or "the hall," for at least five or six years, with all the aid of police, Tourangeaux, the *châssés*, the *gardiens*, never discovered any other house where they lodged;

so that, if they were not in the house of Madame le Brun, for any thing that appears from the evidence, they were no where: A conclusion which naturally and necessarily drives us to believe the evidence of Sir John and Mrs Hewit, that they really were in the house of Madame le Brun, though this person cannot now be found out.

MANY other circumstances have been urged against the defender as matters of evidence, which appear to me perfectly innocent and insignificant. The question was asked, Why did they leave Rheims and go to Paris? But this is really a very ambiguous circumstance. If they had staid at Rheims, the question might then have been asked, Why did they not proceed to Paris, where the best assistance could have been had in case of danger in the delivery? It was asked, Why was so obscure a man as La Marre employed in the important office of Lady Jane's delivery? I answer, That La Marre was a very reputable man in his profession: And it appears from the evidence of Merager, that his assistance too was bespoke in case of need. The question was asked, Why did they send away one of the children? Why did they not carry both of them to the house of Michell? The answer is quite simple and satisfactory,

tisfactory, That the youngest child, being from his birth very delicate and weak, was sent to the country by the advice of the accoucheur. It was said, Why did not Lady Jane, who is pointed out in the evidence as a most tender and affectionate mother, go to visit her poor & only child Sholto during all the time of her stay at Paris? I answer, It can hardly be doubted that she did make visits to this child; tho' circumstances of this nature may not be clearly proved at this time of day: Nor do I remember that this question was put to any of the witnesses.

I now come to mention, in very few words, another class of circumstances, which I cannot consider as altogether light or trivial, and which are not so well accounted for. I have never heard a good or satisfactory reason given why the servant-maids were sent at Rheims. It seems strange that the child Sholto was sent to reside at Paris, recommended to no person of their acquaintance, excepting La Harpe; and yet Sir John says he had no certain discretion to send him. In ordinary cases, indeed, it is no unusual thing that children at nurse are only seen by parents and physicians, or doctors, till they are brought home: But in the circumstance of these parties, in a

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foreign country, and removed at the distance of Rheims from Paris, it was certainly natural that they should desire friends on the spot to look after the child. I cannot help still thinking it is a strange circumstance, not well accounted for, that, when Lady Jane was informed of suspicions stirring concerning the birth of these children, she carried her inquiries no further than Aix-la-Chapelle, at a time when the matter was recent, and satisfactory attestations might have been got from Paris. Sir John's account of La Marre is certainly odd; but I cannot consider the particular of La Marre's letters in the same very unfavourable light as some of your Lordships have placed them. I cannot say, that in my sense of this matter, there is a manifest forgery of these letters. When Sir John was examined, these letters were produced to him; he readily, and in a very natural manner, as I remember, said, These are not the original letters of La Marre; they are copies which were taken at my desire by some person at London: Upon further consideration, indeed, he said, that he thought one or two of them might be originals; but he did not say this positively: It is, therefore, a very possible thing, that Sir John Stewart having been

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impartained by Lady Jane to send La Marre's letters to her when in Scotland, Sir John, who was one of the most careless and irregular man in the world, though a gentlemanly honest and brave man, may have mislaid or lost the true letters, and made up these from memory or from copies, to quiet Lady Jane. This, though a supposition only, is as natural, and more consistent with the circumstances in evidence, and I am sure it is more charitable, than the supposition of an actual forgery of letters which never existed; for it is in evidence, that Sir John did, upon various occasions, receive and read letters from La Marre.

Therefore I allow that these circumstances are perplexing and not easily accounted for; yet, I must say, that there are two considerations, which, in my opinion, go far to remove the weight of them. In the *first* place, I consider the singularity and strange inattention of Sir John's character. One of the worthiest men who ever gave evidence in any court, I mean Mr Hume of Keith, was often to Sir John's charge, with a truth and candour that must reach every body. He bore up to the pressure and honour of Sir John's character; and said, "He could re-

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“member a joke well; but in other matters “he was apt to commit mistakes, and to “speak rashly.” Both this gentleman and his lady Mrs Hepburn concur in telling particular instances of Sir John’s strange inattention and want of memory in things that were not jocular. I must consider Sir John’s declaration and the other circumstances of evidence, having at the same time in my mind a just impression of his character; I must also consider, that Sir John was examined in an unusual manner, when he was afflicted with the infirmities of age and disease, without any previous condescendence, upon a vast variety of facts which had happened at the distance of many years. *Secondly*, I am bound to consider, that as this inquiry is brought at so late a period, many circumstances may now seem strange, which would have been easily explained and accounted for, if this inquiry had been recently brought; and I am greatly moved with the circumstance which was observed by one of your Lordships, concerning the man-servant. He was dismissed by Sir John about the time when they left Aix-la-Chappelle, and proceeded on their journey to Paris. This was mentioned by the pursuers as one circumstance of suspicion; and had it not been explained,

plained, I should certainly have considered it in that light: I should certainly have set it down in the class of circumstances which I am strange, and which I cannot account for. But by mere accident, the wife of this man-servant was found out; and it is now in proof, that the fellow had been a deserter from the French service: That Sir John was unwilling to put with him; but, for the above reason, he would not venture to go into France with him.

I shall conclude with observing, that the defender's case will be singularly hard in two respects, if judgment go against him: First, It cannot be hid, that he had a fair British trial for his birth-right; for my part, I can never think, that he has had a fair trial. I cannot be suspected to mean any reflection on the proceedings of this court. In this court, he has had a fair and indulgent trial, from the first great act of justice, by which possession of the estate was awarded to him, down to this day: But his trial has not been fair, in respect of the prosecutors' conduct. Secondly, it surprised me to hear an observation from one of your Lordships, that the evidence in the cause had no concern with the title. That is, I think, the

the merits of it, and that the proceedings of the Tournelle and of the Monitoire are improperly brought under consideration when we are to determine this great question of birth-right. The conduct of parties and their agents must always be considered in a question of fact, if any improper means have been used to influence the evidence; otherwise bribery and downright corruption itself would not fall under consideration when we judge of a proof. In this case, the arbitrary engines of France have been used to influence and pervert evidence. These engines have been misused; for, in France itself, such a fictitious criminal trial could not have been tolerated; nor would they have suffered such a Monitoire to have been published in any cause depending before the high courts of Paris. The defender's case will be singularly hard in another respect, that there is no instance similar to this among the various cases of *suppositio partus* which have been quoted. In these cases, for most part, the trial was recently brought. In all of them, where conviction followed, the proof has been direct, clear, and conclusive. In no one case has it been found against the defender, where
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the proofs were such as occur in this case : That a child has been brought up from infancy to manhood : That his birth has been proved by direct testimony of two witnesses, confirmed by such a variety of concurring circumstances ; confirmed by the clearest proofs of pregnancy, by inspection of the most private correspondence of the parents, and by their dying declarations : I am therefore clear for repelling the reasons of reduction.

LORD

L O R D K E N N E T.

I N this cause of great importance and expectation, it is reasonable, that each of the judges should deliver his opinion, with the reasons upon which it is founded, for the satisfaction of the parties. But it is unnecessary, and even improper in doing so, to go through the great mass of proof, which lies before your Lordships, or to take notice of every argument which has been urged in the cause. The plan I have formed for myself is, to deliver my opinion, and to mention the chief points upon which it is founded. Several of these points have already been mentioned by your Lordships, who have spoke before me; however, it will still be necessary to take notice of them, as the grounds of my opinion. But I shall do it as shortly as possible; because I do not speak with a view to persuade any of your Lordships to embrace the opinion which I have formed; that is a task for which I do not think myself qualified; and though I were, I would not undertake

dertake it; because it would be more agreeable to me, if those who have formed a contrary opinion could convince me, that I ought to alter mine, as it is for sustaining the reasons of reduction.

The points of law which occur in this cause, appear to me to be easily determined. The *questio* is, Upon whom does the *onus probandi* lie? As to this, when one claims to be served heir to his predecessor, he must prove his propinquity; but, in order to establish this, no more is necessary, than to prove the acknowledgement of his parents, or that he was habit and repute to be their son, or habit and repute to be the heir of the person to whom he claims to be served. The defendant has already proved this in his service, and has also done so in this process of reduction. But this is not a *probatio probata*. It may be got the better of by contrary evidence; and it lies upon the persons who object to the service to bring this evidence. The crime of *paterfamilias* is not a common one; but instances of it have occurred; and it would occur more frequently, if persons acknowledging one to be their son, were sufficient to give him that character. It would, therefore, be dangerous to society, if no contrary proof could

could be allowed of. And, if the acknowledgement of parents, or of such as pretend to be so, establishes a *presumptio juris et de jure*, that the person so acknowledged is really their son, your Lordships, and the House of Peers have proceeded very improperly in this cause, by allowing the pursuers to prove, that the defender was not the son of Sir John Stewart and Lady Jane Douglas. For why did you put the parties to the trouble and expence of so long a proof, if it can be of no avail after it is brought? The process ought rather to have been dismissed at the beginning. But no lawyer ever maintained such an absurd proposition. For, as to this point, the law stands thus: That no person is bound to bring a direct proof of his birth. It is sufficient for him to prove the acknowledgement of his parents, or the habit and repute of his being their son. This intitles him to that character, until the contrary is proved; and which may be proved by those who have an interest. When I establish these principles, I do not (as was hinted yesterday) weaken the security which men have for their birth-rights, nor endanger the state of those who have been born in America, or in the most distant parts of the globe. For they
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are not obliged to bring a direct proof of their birth; and those who object to it, must bring a clear and convincing proof of the imposture. I do not mean such a proof as convinces every one. It is seldom possible to bring such a proof; but it must appear convincing to those who are for reducing a service.

THESE observations remove the objections which have been made against the lateness of bringing the action. The defender does not suffer thereby; because he is not bound to bring a direct proof of his birth, as I have already said; and it commonly will be more easy to detect a fraud, when the challenge is recently brought, than at a distant period. Happy had it been for this defender, if the pursuers had been more late in bringing their action. For, if Sir John Stewart and Mrs Hewit had been dead before the commencement of it, the reasons of reduction would not this day have appeared so clearly proved. In passing, it may be observed, that the pursuers had no interest to bring the action till after the death of the late Duke of Douglas; for, till a short time before that period, the defender was, by the Duke's indentures, excluded from succeeding to the estate of Douglas.

The next point to be considered, is the kind of evidence which is sufficient for reducing a service; and as to this, I am of opinion, that direct evidence is not required; but that a circumstantial proof is sufficient for that purpose. Lawyers who have wrote upon this point of *partus suppositio*, have expressly said so; and we have daily instances of men being tried for their lives, and condemned, on circumstantial evidence. Occult crimes can seldom be brought to light any other way; and indeed, circumstantial proofs are as convincing as direct proofs; nay, often more so; for in the last, there is more hazard of witnesses conspiring to swear to a falsehood. But, in a circumstantial proof, where there are a number of witnesses and circumstances, having no immediate connection with each other; and yet, all these circumstances pointing towards the same center; these must be fully as convincing, and make as strong an impression upon the minds of judges or juries, as any direct proofs whatever; and, in judging of circumstantial evidence, the whole circumstances ought to be taken together; for some of them, which may appear trivial by themselves, may have weight, when joined to others.

I have considered and reconsidered the evidence now before us with all possible attention. At the outset of the cause I did believe that the defender was the son of Lady Jane Douglas. I had a prejudice in his favour; but it was a legal one. I was unwilling to believe that persons of Sir John and Lady Jane's rank could be capable of committing the crime laid to their charge. In every case, the presumption is for innocence; I therefore examined the proof brought by the pursuers with the utmost jealousy, and that brought by the defender with the most favourable eye; and if, after all, I had entertained any doubt in my own mind, if I had but seen a probability that the defender was the son of those who acknowledged him for their child, I would have been for absolving him from the accusation: For I hold it to be a just principle, that it is better that a supposititious child get this estate, than that the son of Lady Jane Douglas should be deprived of it. God forbid that this court should disinherit the son of Lady Jane Douglas! God forbid that I should have a hand in disinheriting the son of Lady Jane Douglas. But if it appears to me, as it really does, that the defender is not her son, I cannot, from motives of compassion,

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give him that estate which belongs to others.

I come now to consider the proof, and the *first* head of it is the proof of Lady Jane's pregnancy. As to this, it is certainly proved, that she had the appearances of pregnancy ; but all such, from the nature of them, are fallacious. Women have often been deceived with respect to them ; and when an imposture is intended, they must be assumed in such a way as to deceive others. Common sense, as well as our law-books, teach this. There is a title in the civil law, *de centre infitiando*, in which rules are laid down for detecting such frauds. The appearances of pregnancy are sworn to by many witnesses, who I imagine have sworn truly. But why did they think that Lady Jane was with child ? They have told us, because she was of a pale complexion ; that she had frequent reachings and vomings ; and on account of her bulk. As to the first two, it is proved, that she was naturally pale, and that she had disorders in her stomach. And as to the last, she behoved to assume the appearance of bulk, in order to carry on a feigned pregnancy. Our William Stewart and his Lady, who saw Lady Jane at Aix-la-Chapelle in 1747, say, that they then thought her with child, because she

she looked pale, and had frequent vomitings; and yet it is admitted, that at this period, she was not with child.

There are some particulars sworn to by Mrs Hewit and Tibby Walker, with regard to the pregnancy, which are rather suspicious. They say that Lady was so unwickly when at Aix-la-Chapelle, that she chored to be helped into her bed, and to take the assistance of a stool or box for that purpose; and yet afterwards, when she made her journey from thence to Paris by Rheims, she could get into the coach without being lifted up, except only once at her outfitting from Rheims to Paris, yet the steps of those machines are proved to be higher than her bed. Another suspicious circumstance sworn to by these witnesses, is the tall and remarkable bulk of Lady Janet and yet, several witnesses say, they did not discover, that she was with child. This might be the case although she really was so; but is not very consistent with the account of the extraordinary bulk which these two witnesses say she had.

Mrs Hewit deposes, that during their stay at Rheims before the delivery, Lady Janet told them she was abroad, on account of her un-
 comfortable situation, and never went on the street dur-

once; and yet Abbé Hibert, who is by no means a suspicious witness against the defender, swears, that he was with Lady Jane every day while she was at Rheims before her going to Paris: That they daily walked out together when the weather would permit, and generally did so in a garden, the road to which was through the street. And Mr Querengal deposes, That at that time he met Lady Jane three or four times upon the street. And that she could not be so unwieldy as Mrs Hewit represented, appears from the oath of the mantuamaker who took her measure when at Rheims, and yet did not discover her being with child. Mrs Hewit has indeed denied, that any gowns were made or altered for Lady Jane when at Rheims, previous to her going to Paris; but this is disproved by Tibby Walker, as well as by the mantuamaker; and Mrs Hewit's denying it, is a circumstance against the defender.

THE appearances, however, of pregnancy, is the strongest part of the proof brought by the defender. And I was once in hopes that it might have been sufficient for convincing me to form an opinion in his favour, notwithstanding the other circumstances proved by the pursuers; because it is not alledged that

that Lady Jane had a false conception, or was herself deceived; but that the appearances of pregnancy were assumed in order to impose upon others. I therefore thought, that if there was a convincing proof of her having a real big belly, it might go far to establish a real pregnancy; and consequently, a real delivery. For this purpose, I carefully examined the evidence of those witnesses who say they had access to see her without her cloaths. The first of these is Madame Tewis; But, alas! we have only her declaration, and not her oath; and though people ought to be equally desirous to tell truth upon a declaration as upon oath; yet, experience shows us, that this is not the common opinion of mankind; and therefore, the solemnity of oaths has been introduced by all nations, and in every age of the world, in order to discover the truth. Besides, although Madame Tewis had sworn what she has only declared, I could have paid little regard to her testimony; because she has said things which are not credible. She is indeed more modest when declaring before the notary; but Sir George Colquhoun and Captain Douglas swear, that she declared to them, she had often visited Lady Jane in the morning before she got out.

out of bed: That she had frequently sat down upon her bed-side, put her hand upon her belly, and found the child or children moving. Now, it cannot be believed, that Lady Jane would allow Madame Tewis to use such freedoms with her. And the landladies with whom Lady Jane then lodged have sworn, that Madame Tewis visited her seldom; and that people did not get access to Lady Jane when in bed. The next witness upon this point is Mrs Hepburn. I have no reason to suspect her evidence; but she did not see enough for ascertaining that Lady Jane was truly with child. She came into her room one morning at Leige, when Lady Jane was putting on her cloaths, and though not then dressed, it would appear from Mrs Hepburn's oath, that she had on a short gown and petty-coats; at least, Mrs Hepburn makes her observations from the size of Lady Jane's breasts, and not of her belly; and it surely cannot be gathered with certainty from the appearance of her breasts, that she was with child. Upon this head I was willing to call in to my assistance the evidence which we have of what was reported by Elly Caw, one of Lady Jane's maids, who died before the commencement of this action. She said, she believed that

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Lady Jane was with child; but she has not said upon what this belief was founded. And it appears from the oath of Tibby Walker, that Filly Caw did not see Lady Jane without her cloaths; for she swears that she herself was the person who assisted Lady Jane to get out of bed, and dressed her in the morning; and that Filly Caw only assisted to dress her before dinner.

This whole of this matter then comes to rest upon the evidence of Tibby Walker; and I cannot look upon it as proved by this single witness, especially as she is a very suspicious one, and has sworn several things which are not probable, such as the great bulk and unwieldiness of Lady Jane, her threatening to miscarry at Reek, and being told there, that she went immediately to bed upon her arrival at the house; and that she, Tibby Walker, sat close by her all night; and yet it is proved, that both Tibby Walker and Filly Caw slept that night in the fire-room with the company who had arrived with the coach. She has sworn that the midwife saw her Lady Jane in the morning, though she admits that she never saw her before her death; and that she saw many of the gentlemen and ladies of the family, and that she saw the child in the arms of the nurse, and that she saw the child

Marre, though it is prov'd they are forged; and she has sworn, that the last of them, which is dated in the 1752, was received by Sir John when staying in Mr Murray's house in London, though it is certain he left that house in 1751; and what she swears with respect to the conversation betwixt Lady Jane Douglas and the then Lord Advocate in 1752, is very suspicious. Upon the whole, therefore, there is no proof of pregnancy sufficient for getting the better of the circumstances which have been proved by the pursuers, in order to establish the imposture: But, on the contrary, some of the proofs with respect to the pregnancy tend to create suspicions of its not being a real one.

THERE are some suspicious circumstances in proof previous to Lady Jane's going to Paris; such as her different pretences for leaving Aix-la-Chappelle, different places of destination mentioned, when about to leave it, and the false pretence for leaving Rheims on account of not having proper assistance there for her delivery; which I only just mention, because they have already been taken notice of by some of your Lordships. But there is one circumstance, which has not been mentioned,

tioned, and appears to me of weight; namely, that Madame Lewis, when she believed Lady Jane to be with child, proposed, by the assistance of her cousin, to obtain leave for Lady Jane to lie in at a country-house belonging to the Comte de Saline; for which purpose, a letter was wrote to the Count, then at Vienna. Had Lady Jane been truly with child, this was an excellent scheme for her; she thereby got free of the expence of living at Aix-la-Chappelle, which was one of the reasons for leaving it, and got free of the expence of hired lodgings. But Lady Jane did not think proper to stay until an answer came to this letter. Had she been in a hurry to get to the place where she was to be delivered, it might have been a good reason for her not waiting an answer to the letter, that she was afraid to delay her journey until near the time of her delivery. But we do not find, that this was the case; for she put on some time at Lige, on her way to Rheims, and she staid a month at Rheims before setting out for Paris. I do not say, that these circumstances are entirely themselves; but they have weight, when added to o-

LEAVING the maids at Rheims, when she went to Paris to lie in, is a strong circumstance against her; as she had been at the charge of having them about her in the several places where she had formerly staid, their assistance surely was more necessary, when she was to be brought to bed. It has been said, that this is a two-edged weapon, and cuts both ways; for, if Tibby Walker was an accomplice, she ought to have been taken to Paris, in order to have given evidence of the birth. But, in the *first* place, supposing her an accomplice, it might have been dangerous to have taken her to Paris, lest, upon an examination, and by cross interrogatories, she and Mrs Hewit might have contradicted one another. In the *next* place, perhaps Tibby Walker was not then an accomplice; they might be afraid at that time to trust her with the whole of the secrets; and perhaps she is not yet an accomplice, though her affection for the defender (which servants naturally acquire for children in the house with them) has led her to swear several things in his favour, which are not agreeable to the truth. The pretence for leaving the maids at Rheims, *viz.* the want of money, is also a strong circumstance against the defender;

defender; because this pretence is a false one; for it is in proof, by written evidence, that Sir John had a credit upon Paris for near 2000 livres, and received the money two days after he arrived there.

THE capital point is the delivery of Lady Jane. The defender is not bound to prove this; but, if those who say they were his parents, or Mrs Hewit, who says she was present at the birth, give contradictory or incredible accounts of it; or, if the accounts given by them are partly disproved by credible witnesses, these things must go a great length for establishing the proof of the imposture.

It has been said, that the delivery is proved by two witnesses, viz. Sir John Stewart and Mrs Hewit. If these witnesses were altogether habile, their testimonies would go a great length against the circumstantial evidence brought by the pursuers. But parents, or those who say they are so, cannot be admitted as evidence in such cases; though, if they give a probable account of the matters, it will aid the defender; if they do not, it must have weight against him. But their oaths on that head cannot amount to a proof; otherwise, it would be an easy matter to impose a supposititious

posititious child on the world; because they would have no more to do, than to swear to what they had alledged. Besides, even supposing, that twenty witnesses had sworn to the actual delivery, yet, if shall be shown, by internal or external evidence, that these witnesses have sworn falsely, the proof by these witnesses may be got the better of. This often happens in the course of judicial proceedings; your Lordships are often obliged to weigh evidence, when contradictory, and to consider which preponderates. If, therefore, the pursuers have proved, that Lady Jane, Sir John, and Mrs Hewit, have given inconsistent, contradictory, and incredible accounts of this affair, and such as are in part disproved by other evidence, it must go far for establishing the imposture.

LADY JANE carefully avoided entering into particulars concerning her delivery in the many letters wrote by her upon the subject, and in the conversations she is proved to have had concerning it. This of itself is a suspicious circumstance. She never mentioned the house where, nor the man-midwife by whom she was delivered; and mentioned no circumstances concerning the birth, except once when pressed to it by Lady Stair;

on which occasion she alleged, that the Duke of
Rheims, because she could not get proper af-
fluence there; of which she says she was in-
formed by a stranger lady, who called for
her to give her that information the morning
after her arrival at that place. This story is
so improbable, that it is surprising a person of
Lady Jane's acquaintance should have told
it; and it appears from the proof, that pro-
per assistance might have been got there.
And as to excuse her for not having any of
her country-folk in Paris present at her de-
livery, she said to Lady Mary, that she was
brought to bed at an hour, or an hour and
a half after her arrival there; though it is
now admitted, that she was six days at Pa-
ris before her delivery. It is true, this con-
versation is only given us in one form, to be
one witness; but our friend, who speaks
to it, is a lady of high understanding, ho-
nour, and integrity, that none can doubt what
she says.

Lady Jane's going there; and it is admitted he did not. Now, although there was no necessity for going previously to Paris to bespeak an accoucheur, because in such a town, one could be found on a short warning; yet, when Sir John tells falsehoods when examined concerning the delivery, and the circumstances attending it, it creates a suspicion, that the whole tale told by him is false.

MRS HEWIT says, that no nurse was bespoke previous to Lady Jane's delivery, and that Lady Jane would not bespeak one, because she did not know if she would have a living child. This is indeed singular; no lady is certain that she will have a living child, but all hope for one, and in that view take care to provide a nurse, even when living in their own country amongst friends and acquaintance; and it was much more necessary to do so in a foreign country, and at a place where one had no acquaintance. An ingenious answer was suggested to this by one of your Lordships who delivered his opinion yesterday, *viz.* that Pier la Marre had bespoke the nurse, whose name is Garnier: That Mrs Hewit did not know this; and as two children were born, when only one was expected, the weakest child was

was given to her, and another nurse behaved to be provided for the other child. But this supposition is contradicted by the proof; for Mrs Hewit, who was well acquainted with all Lady Jane's transactions, swears expressly, "That Lady Jane would not allow any nurse to be bespoken before her delivery, because she said she did not know if she would bear a living child." And Mrs Hewit, in her letter to the maids, dated 22d July 1748, giving them an account of the delivery, writes: "The children are two lovely creatures, but the youngest very small and weakly; so the Doctor beg'd he might be sent to the country, as soon as possible; your master and I had to go not a little way before we got a nurse that we would part with him to; at last, we got one of the cleanest best women you ever saw, a farmer's wife." It was therefore Mrs Hewit and Sir John, and not Pier la Marre, who provided this nurse for Sholto; and I will by and by shew, that whether Sholto was Lady Jane's son or not, he was not the child nursed by Garnier. It is also observable, that Sir John and Mrs Hewit gave different accounts of the defender's parents; and even in Mrs Hewit's letters to the maids wrote from Paris, there is not the least mention of these nurses.

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do not agree. Sometimes she makes their number amount to four, sometimes to five; sometimes they are all good ones, sometimes not: I only mention these things as circumstances, to shew that scarce in any one particular do we find Mrs Hewit and Sir John agreeing in one story.

SIR JOHN STEWART, in his declaration, says that he did not know where to find Pier la Marr, except in the Thuilleries or Luxemburg garden. This is truly incredible; for what was to be done if Lady Jane had taken her pains in the night-time, or at a time of day when La Marre was not in these places? Sir John indeed thinks proper, in the oath he afterwards emitted, to correct what he had formerly said, and alledge, that La Marre, on seeing Lady Jane's condition, told him where he lodged: But this correction cannot be credited; for Sir John had formerly said, that if Lady Jane had taken her pains in the night-time, he believed to have sought for another accoucheur, though he did not pretend to know where any such was to be got. He had also said, that he did not know how to direct his letters for Pier la Marre when he wrote to him from Rheims; and therefore directed them to the care of the postmaster. He also
said,

said, that on his return to Paris to see Sholto, he went to the Thuilleries in quest of Pier la Marre: because still he did not know where he lodged. The pretence for La Marre's not telling where he lodged is incredible. He says it was because he had come to Paris about a thorny affair. But why could he not trust Sir John with the place where he lodged, seeing Sir John pretends that he was intimately acquainted with him in the 1721? Could he not trust him as well as the post-office people? Besides, La Marre does not appear to have kept himself secret while at Paris; for Sir John says he walked daily in the Luxembourg and Thuilleries, and also appeared in the coffee-houses.

ANOTHER circumstance is, that, according to Mrs Hewitt's account, Lady Jane had no ink name. Tibby Walker indeed says, that Mrs Hewitt wrote to her, there was a sick nurse; and gives this as a reason why she needed not be fast for to Paris. One of the two most eminent men in this particular.

Another very singular circumstance is, that, according to Mrs Hewitt, La Marre was taken from her hands, just after her delivery of the child. This is confirmed by Michell's account, who says, that he never recollects ever

ed her while in their house. This is indeed very extraordinary. The most eminent and best employed accoucheurs repeat their visits to Ladies after having delivered them; and it is not to be credited, that such an one as La Mare would have taken so little care of Lady Jane, had he really delivered her. This circumstance is the more extraordinary, that Mr La Mare is said to have had the charge of Sholto; and supposing he had taken no care of Lady Jane after her delivery, why did he not come to tell her how the weak tender child Sholto was doing, either while she resided at Paris or at Dammartin?

With respect to the place of delivery, when Sir John was pressed by Mrs Napier to give an account of it, he declined, saying he had forgot the names of places; at last, when hard pushed by her, he condescended upon Michell's house as the place of delivery. Mrs Hewit, about the same period, writes to the Duke of Douglas, that Lady Jane was brought to bed in Michell's. Now, though Mrs Hewit might forget French names; yet, how came she to condescend upon a wrong place, and on one as the place of delivery where it did not happen, and with which she might be well acquainted, having staid
more

more than a fortnight there? And when examined upon oath before your Lordships, the fact that when places were mentioned to her she might remember them. If so, how came she to fall into this mistake with respect to the place of delivery? And after it appeared that the inquiries made by Sir James Stewart, in consequence of a letter from Mrs. Norton, that Antisl's was not the place of delivery, the 'Brun' was pitched upon.

[illegible]

from Madame Gourey, in which she writes, that she does not believe Madame Blainville obtained leave from her to postpone her coming home to her service for some days. But this extrajudicial declaration cannot contradict the direct evidence. If Lady Jane was really delivered of twins upon the 15th July it is not probable, that she could, upon the 26th or 27th of that month, take a jaunt of pleasure to a place twelve miles distant from Paris, walk in the gardens there, and return to Paris the same day. But whatever be in this, can it be believed, that, if she had so much strength, she would not have gone to see her child Sholto, who is represented then to have been in a very low and weak state, and residing near to Paris? One of your Lordships yesterday observed, that perhaps Lady Jane did go to see him, only that the question had not been asked at Mrs Hewit. But this is a mistake; for she expressly depones, “That, “when Lady Jane and the deponent were at “the village near Paris, Sir John left it, and “went to see the boy Sholto (which, however, “Sir John himself denies); but that Lady Jane “never went to see him, either from Paris, nor “from this village, being weak.” Mrs Hewit’s denying the jaunt to Versailles, is also a circumstance

cumstance against the defender. Want of memory will not excuse this; for, as it was the only time she ever was at that place, she believed to remember it.

The next suspicious circumstance is the conduct of Lady Jane, Sir John, and Mrs Hewitt, when at Michell's. They do not mention there, that they had been at Le Brun's, nor do they mention La Marre, or that Lady Jane had been brought to bed of twins: But say, they had a child in the country, of which Lady Jane had lately been delivered. Why did they not bring the child along with them in the coach, instead of sending him to the nurse's home in Paris, which they say they did? Why say, that he was somewhere about St Germain, if he was in Paris? And it is observable, that, when they went from Michell's to bring the child, they set out in the morning, and did not return until the evening of that day, or morning of next day, that it might be believed they had gone to the country for him. Madame Favre, the defender's nurse, and Mademoiselle de la Cour, say, that the child whom they found, had been appeared of for three or four days.

Another circumstance, which is suspicious, is, That according to an account given to the

account of the matter, Sholto was left under the care of La Marre, without their knowing to what place he was sent, or the name of his nurse, even though they did not know where La Marre himself lodged; and they believed to find out La Marre, before they could find the child. What if La Marre had died, or had left Paris, where he only was occasionally, according to Sir John's account? By what means would they, in these cases, have found out their child?

ANOTHER remarkable circumstance is this, That no body ever saw Sholto until he made his appearance at Rheims, altho' Sir John had acquaintance at Paris, and there was one Mr Johnston there, a cousin of Mrs Hewit, who lay under obligations to Sir John and Lady Jane; he was made acquainted by a letter from Mrs Hewit of Lady Jane's delivery, after they had returned to Rheims, and yet was not desired to see Sholto. Is it credible, that, if this child had then been in the neighbourhood of Paris, Mr Johnston would not have been desired to see him, and to write how he was thriving, and what care his nurse took of him?

ANOTHER extraordinary circumstance is, That Sir John does not remember where he lodged

to go when he returned with Lady Jane and Mrs. Hewitt to Paris in November 1749, in order to bring Sholto from his nurse; and they lay three days at Paris, before they either go to the village to see the child, or order him to come. Would a fond mother, who had been in her womb from the period of conception, have acted in the manner? No; it is incredible.

The distance of time, or lost memories, may account for not finding or forgetting some particulars, but cannot account for so many as have been taken notice of; especially as they regarded a child in which John was so nearly concerned. When questioned by Mrs. Rogers, the distance of time was not so great, as I thought it seem to be among your readers, when they perused his declaration, and have heard of an officer observing your son's judgment, that he was exceedingly partial to his wife, with great deliberation, and that his opinion was not a little confirmed by the testimony of his friends. The child, however, was not brought to the world till the 27th of December 1749, after his mother had been in the world above a year. That a child should be so long in the world, and yet be so perfectly healthy, is a thing which I have never heard of before. It is a thing which I have never heard of before.

to have a bad memory, only that she could not remember French names. On the contrary, when called upon in March 1765, in order to be re-examined, she says, “ That she is “ in such a situation she cannot tell what is “ right or wrong at present; that it is hard “ these questions had not been asked two “ months ago, when she could have given “ answers.”

ANOTHER strong circumstance against the defender is, That altho’ Sir John and Lady Jane were early informed when abroad, by a letter from Mr Colvill, of the suspicions entertained in Scotland concerning the truth of the defender’s birth; yet they took no care to remove these suspicions, by procuring proper attestations of it. They were again informed of these suspicions upon their arrival in England about the end of the year 1749; and yet they took no proper methods for clearing the truth, by procuring affidavits from La Marre and Le Brun. This circumstance is the stronger, that they did not altogether disregard these suspicions, but sent to Aix-la-Chappelle for declarations with respect to the appearance of pregnancy; and yet they did not do what would have been much more effectual: They did not attempt to get any attestations from La Marre.

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Le Brun, or others present at the delivery, of the truth of it, though these might easily have been obtained in the 1750, if Lady Jane had truly been delivered of twins.

It has been alledged, that Lady Jane would not apply for such attestations, because she took it amiss, that her honour should be called in question; and she was advised by the Lord Advocate, that such attestations were not necessary, as those who objected to the truth of the birth behoved to prove their objections. But, 1st, Nobody of common prudence would, on a pretence of honour, have neglected a thing so much for the advantage of their children. 2^{dly}, It appears she did apply for attestations, though not to the proper persons. 3^{dly}, She did not get the advice from the Lord Advocate till 1752; so that could not regulate her conduct in 1751; and it is not probable, that ever the Lord Advocate gave such an advice: He was a man of more understanding: Besides, the matter might have been made easy, without sending to Paris for attestations from La Motte. Sir John had kept some of the many letters which, he says, he received from him while at Rheims, and which certainly he would have done, had he received any such; especially,

especially, when it is considered that he was made acquainted, when at Rheims, with the suspicions then entertained in Scotland against the truth of the birth. Many letters, of much less importance, have been preserved by Lady Jane and Sir John; add to this, that in place of getting an attestation from La Marre, or producing real letters from him, four forged letters as from him are produced. Truth does not stand in need of such supports, and one who will be guilty of forging letters, may also be supposed capable of forging children; at least, as none will commit a crime, unless he has some reason for so doing, Sir John would not have forged letters, if real ones could have been procured. If it shall be said, that Sir John could not get letters nor attestations from La Marre in 1750 or 1752, because La Marre was then in Italy for his health, it must then be admitted, that Louis Pierre Delamarre, whom the defender has now pitched upon as the accoucher, was really not so; for it is proved, that he never went to Italy, but resided at Paris till his death, and that he was alive in the 1752.

It has been said, that the letters in process are not forged, but copies from originals: But Sir John says, that some of them are originals,

originals, and some of them only copies; and that he sat beside Mr Clinton while he copied them, that he might make them as like to the originals as possible; for which purpose they were written upon French paper, folded and sealed: Also, if the letter in the 1752 be either an original or a true copy from one, Louis Pierre Delamarre did not deliver Lady Jane; for the writer of that letter says he had been Italy.

Another circumstance against the defender is, that neither Madame le Brun nor the place in Paris where she lived can now be discovered. The latencis of bringing this action may be some excuse for this; but it is certainly a circumstance against him, that, from the books of police, there appears to have been no person of that name who kept furnished lodgings at Paris in 1748. As to the supposition of her being a *garçonnière*, that is not consistent with her having different lodgers in her house, which Sir John and Mrs. Hewitt say she had; nor is it probable, that Lady Jane would have put up in the house of a *garçonnière* dealer for residing. To render this probable, it has been said, that she might do so for cheapness: But though it is true, that she had a very little money

for money; yet this did not arise from his not receiving money, but from his not being an oeconomist. Lady Jane, at that time, enjoyed her pension of L. 300 *per annum* from her brother; and Sir John also occasionally received money from other people. It is in proof, that, on his arrival at Paris at this time, he received about 2000 livres. When he was possessed of this money, he surely would not, in order to save it, place Lady Jane in an improper house. He treated Monsieur Guenet in the journey from Aix-la-Chappelle to Rheims; and when he was so open-handed, he would not omit taking proper care of Lady Jane, when he had money to enable him to do it.

I do not think it conclusive against the defender, that Pier la Marre cannot now be found. He may have left Paris or died betwixt the time of Lady Jane's delivery and the taking of the proof. This is the fair argument for the defender. He is not bound to produce him; but I think the defender can draw no assistance to his cause from the discovery of a Louis Pierre Delamarre; for this man can by no means answer the description which Sir John gives of the Pier la Marre who delivered Lady Jane. The La Marre whom
he

he describes was a Walloon. I am not so well acquainted with the geography of that country, as to say how far one born in Montreuil may be considered as a Walloon; but surely the other circumstances do not agree. The La Marre described by Sir John was about 60 years of age in the 1748: The other La Marre is then but 37. The one was a surgeon to a regiment with whom Sir John was made acquainted through the means of Colonel Montaine when at Leige in 1721; and he was then intimate with him. The other never was a surgeon to a regiment, and in 1721 was only a boy of ten years of age. Sir John's Pier la Marre was only occasionally at Paris upon an *affaire épiscopale*; the other had his constant residence there. The one afterwards went to Italy for his health; the other never went there. Sir John's bad memory will not account for these discrepancies: A bad memory might make him forget facts, but could never make him invent them.

That this Louis Pierre Delmarie delivered a foreign Lady at Paris, is proved by several witnesses; that it appears from the proof, that Lady Jane was not this foreign lady, because the delivery happened previous to the year 1746. The Marquis who endeavours to

apply

apply this delivery to Lady Jane, admits, that La Marre told him of the delivery in the *Chambre de garde* of the Hotel Dieu, in presence of Monsieur Melet and Monsieur Giles. These two witnesses agree with Menager in this; and add, that it was when La Marre resided in the Hotel Dieu, as a surgeon there; and it is in proof, that he left the Hotel in December 1746. The evidence of Monsieur Giles has indeed been objected to; but no objection is offered against the evidence of Monsieur Melet; and there are several things in Menager's oath which shew, that he cannot be credited. Thus he says, that La Marre taught midwifery, and practised under Monsieur Menjon. This is disproved by Menjon's oath. Monsieur Menager says, that La Marre signed his name *P.* and *Pier la Marre*; tho' it is not customary for French people to sign by their Christian names; and it is proved, by La Marre's brothers, and by the production of writings subscribed by him, that he only signed *Delamarre*. It is evident, that Menager has sworn to the subscription as above, in order to support the forged letters, which are so signed. Monsieur Menager says, that he himself was recommended to the Comte d'Argenson, as his surgeon by Mr Bagieu.

Bagieu. Bagieu swears, he never recommended any such person. It is also remarkable, that although Menager says, that La Marre told him the foreign lady was delivered in Madame le Brun's house; and that La Marre desired he might be ready to assist him at the delivery, if necessary; yet he did not tell him in what place of Paris Le Brun's house was in 1748; nor did he ever know it, though La Marre applied to him for his assistance. The reason of this is obvious. Menager durst not mention the place, because thereby the falsehood might have been detected; and though Menager says, that he knows there was a connection betwixt Pier la Marre and a Madame le Brun; yet La Marre's brothers swear, that they knew of none such; and Sir John has told that he thinks he was recommended to Le Prince Louis by Monsieur Godefroy.

It is also proved, that this Louis Pierre Delamare delivered Lady Jane, then the story of Madame Garnier's having nursed Sholto made fall to the ground; for it was this Louis Pierre Delamare who gave the child to her to be nursed: and, independent of that, I think it is clear, that Sholto was not the child nursed by Garnier: For, *scilicet*, Sir John says, that Sholto was sent to be nursed at

a village two or three leagues from Paris on the road to Amiens. Garnier lived at the Hauteborne within one eighth of a league of Paris, on the road to Menilmontain. Sholto's nurse was a farmer's wife, Garnier a quarrier's. Sir John and Mrs Hewit agree, that Sholto's nurse came for him ; but the child was brought to Madame Garnier. Mrs Hewit writes to the maids, that she got Sholto's nurse, and that she was pressed to go to Rheims with him. Garnier says, she was bespoke by La Marre, and never desired to leave her own house. Garnier never heard the name of the child, or to whom he belonged ; he has therefore been a concealed one. This was not Sholto's case ; La Marre told Garnier, that the child she was nursing would one day be the richest in his kingdom. This could not be Sholto ; for his elder brother believed to be richer than he.

But, chiefly, the time of the year when nurse Garnier got the child does not agree with the time of Sholto's birth : For Garnier says, her son Jerome was then six months, or six months and a half old, and he was born on the 26th of March ; she therefore received the child which she nursed in September, which agrees better to his coming with torch-light about eight or nine of the clock at night,

night than the bringing a child in that manner in the month of July. This child staid about 15 months with Garnier, and was taken away towards the spring: Sholto staid only 16 months with his nurse, and was taken away from her in November.

I only take notice of these things, to shew that the defender receives no aid from finding a Pierre la Marre, and nurse Garnier: But they are not conclusive against him, as it is extremely possible that the Pier la Marre who delivered Lady Jane, (if she had even brought forth children), and that Sholto's nurse might not be found at such a distance of time, and the defender is not bound to produce them; I do not, therefore, rest my opinion against him on these things, but upon what I formerly stated, *viz.* The contradictory and incredible accounts given by Sir John and Mrs Hewit concerning the birth, concerning the man-midwife, the placing of Sholto they did not know where, nobody ever seeing him till he made his appearance at Rheims; their getting no attestations from Paris concerning the delivery; producing no real letters from Pier la Marre, but producing forged letters in place thereof; and other circumstances which I have already

taken notice of, and will not repeat; and upon what I have still further to observe.

AGAINST these proofs and circumstances which I have already taken notice of, the objections founded on the Tournelle process and the monitoire, do not strike; and notwithstanding of these objections, I cannot altogether lay out of my view the proofs brought by the pursuers, which I am now to mention.

THERE is, in the *first* place, the proof of Sir John and Lady Jane's residing at Godefroy's from the 4th to the 14th of July; in which case she could not be delivered in Le Brun's on the 10th of that month. This residence is expressly deposed to by Monsieur Godefroy and his wife: That his memory is good, appears from his remembering the letter whereby Monsieur Maillefer recommended Sir John to him, before that letter was found; and he does not swear altogether from memory, because he had his books to assist him. It is true, that the name is blank in the title or the accompt which he ascribes to Sir John and his company; but he was assisted to fill up this blank by the entry of Sir John in his household-book on the 8th of August that year, where Sir John is expressly mentioned; and Sir Godefroy swears, that both ac-
compts

compts relate to the same person: He was also admitted by the *livre d'inspecteur*, where Sir John is entered by name. The accuracy of the household-book is established by the inquiry which has been made into it for the space of three years: It is admitted, that Sir John and his company entered to that house on the 4th of July, and staid there for some days; and, if this accompt does not apply to them, there is no other in it that can. It agrees as to the number of three persons, and their paying their bill on the 8th of July, and entering again on the 9th at night: And it is a proof of the goodness of Mr Godefroy's memory, that he even remembers the room in which they lodged; and I do not see it pretended, that he was mistaken in this particular: His evidence is the more to be depended upon, that Mr Godefroy insisted consistently, that Sir John and his company resided at his house during the above period, at a time when the pursuers agent did not believe he had staid there; but insisted that he and his company had resided in Mitchell's house from the 4th to July.

A great outcry has been made against the Town's process; and it has been insisted, that the witnesses who have been examined before

before that court cannot be credited. For my own part, I condemn that process; I think it was improper to call a British subject before a court in France, to which he was not amenable. But I cannot see how that process could be so hurtful to the defender, as is pretended. It has been said, that the witnesses were tied down, not to depart from the evidence which they had given before that court. But why is it to be imagined, that they swore falsely at first? It often happens, that witnesses are examined in this country upon the same facts before different courts. As first before the Jusiciary or commissary-courts; and afterwards before the Court of Session. But was it ever pretended, that they could not be received as witnesses, or credited, because they had formerly been examined before another court? Surely, no: The witnesses examined before the Tournelle have been compared to slaves swearing under their master's lash. But the comparison surely was highly improper. For the parliament of Paris has long been considered as a reputable court. The members of it have often stood up for the liberty of the subject, so far as the constitution of that country would allow; and whatever may be the case with respect

to state-trials, I never heard, that, in private causes, the parliament acted partially, or unjustly, even betwixt the subjects of that country. What then could induce that court to deviate from the paths of justice in a foreign cause, in the event of which no Frenchman had any concern?

This method of examination before that court has been objected to, as the *plaintes* are read over to the witnesses, before their giving evidence, and because they are examined without the presence of the parties. But this objection does not much move me. In trials before the Justiciary-court in this country, witnesses have access to see the printed indictments before they are examined; and the method of examining witnesses differs in different countries. Here it is thought proper, that parties should be present, and have access to put questions, and cross questions to the witnesses. Abroad, in other places, as well as in France, it is thought more expedient for bringing out the truth, that none be present, except the judge, the witness, and the clerk. Truth may be come at both the one way and the other.

That all the witnesses did not think themselves tied down strictly to adhere to what
they

they had deposed before the Tournelle, appears from the evidence of Madame Godefroy. For, when she was examined before that court, she did not remember Sir John Stewart. But, when afterwards examined before your Lordships' commissioners, she came to recollect his having staid in her house, to which she was probably led by perusing the household-books.

As for the pursuers not believing for some time, that Sir John and his company resided in Godefroy's from the 4th to the 14th July; it is of no moment; they were naturally led to this, by Sir John's having said to Mrs Napier, that Lady Jane was delivered in Michell's house on the 10th of that month; and by their finding an entry in Michell's *livre d'inspecteur*, bearing, that Sir John was there on the 8th of that month. But it is now evident, that this was an error in writing the figure, which ought to have been the 18th. This tends to confirm the evidence given by Godefroy, rather than to weaken it, as it shews, that he had not been practised upon by the pursuers.

As to the *Monitoire*, I condemn the style of it. It describes persons and dates too particularly; but it does not strike against that part of the evidence which I have just now mentioned;

tioned; and, if the pursuers have made out, that Sir John and Lady Jane remained in Godefray's from the 4th to the 14th of July, it is decisive of the cause.

But the pursuers proof receives an additional weight from considering what is in evidence concerning the enlevements of Mignon's child in July 1748, and Saury's child in November 1749. That two children were taken away at these periods, cannot be doubted. If the evidence of taking away Mignon's child rested entirely upon the testimonies of Madame Mignon and her husband, I would lay no stress upon it; 1st, because she hath sworn falsely with respect to her seeing the memoirs; and, 2^{dly}, because of the improper stile of the *Monitoire*: But the evidence does not rest upon their testimonies: The thing is proved by a great number of witnesses, and is strengthened by this, that, about the same time, proposals were made for a child from Madame Charlan; but the child not accepted of, because it was too old: The coincidence of the time when Mignon's child was taken away, with the time when the child said to be Lady Jane's made his appearance at Mitchell's, is remarkable; and the time of the enlevement of Mignon's child is distinctly ascertained.

ascertained by the time of keeping the feast of St Clare that year, and the day of the week on which the workmen at the glass-manufactory gave up their work. It is also remarkable, that two children were at that time wanted by the persons who took Mignon's child, and that these persons were foreigners.

THE enlevement of Sanry's child was discovered before publishing the *Monitoire*, and is proved by written as well as by parole evidence, *to wit*, the entry in the police-book. It is true, this entry bears date in January 1750. But this is of no weight; for the enlevement happened some time before that; and the entry mentions, that the child was taken away by Duvernes; and it appears from the police-books, that he lodged in the *Croix de Fer* 21st November 1749, which answers to the time when Sir John and Lady Jane were at Paris that year; and it is proved by witnesses, that Duvernes only staid a few days at the inn. It is also proved, that the child was a fair one; and that he was taken away by a gentleman and two ladies, who were foreigners.

THE proof of these two enlevements have great weight in this cause, when the circumstances

stances of each are considered : The first happens in July 1748, the other in November 1749. The only two periods in which Sir John and Lady Jane were at Paris together : The first is of a new born child, the other of one eighteen months old, by a gentleman and lady who pretended that they wanted to bestow charity by bringing up a poor child ; and yet searched till they found a boy about that age ; and there are no other instances of enlevements of children in Paris in the memory of any of the witnesses who have been examined ; for though it is in proof, that about twenty-two years ago, a lady endeavoured to get a child, yet her attempts proved fruitless ; and the other applications proved to have been made to midwives for children were by surgeons, who wanted dead ones to make experiments on.

THESE things, therefore, added to the accounts given by Lady Jane, Sir John, and Mrs Hewit, concerning the birth and the children, which are contradictory to each other, incredible in themselves, and disproved in sundry particulars by many witnesses, convince me that the reasons of reduction are proved.

It has been objected, that if Lady Jane and Sir John had had a mind to steal a child, in order to impose upon the world, they would not have taken a puny one. I am of the same opinion; but it does not appear, that Sanry's child was of this sort: But as they had not found two children in July 1748, it was necessary to give out that one of the twins was weakly, in order that they might have an excuse for leaving him behind when they went to Rheims.

THE death-bed declarations of Lady Jane and Sir John have been much insisted upon: But I do not see that Lady Jane made any such. She, indeed, did not confess when on death-bed; but continued to shew great tenderness and affection for the defender at that time. This is proved by Doctor Eccles and others; but I see no evidence of any solemn declaration made by her; and when Mrs Greig presses her upon that occasion, she answers in point of law, That if any body doubted the birth of the defender, they behoved to disprove it.

It is true, Sir John did emit a death-bed declaration in favour of the defender. I am desirous to give great weight to what one says when on the brink of the grave. It is
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an awful period: But, alas! experience shews us, that people do not always attend properly to it, and venture, even when in that situation, to assert and declare things not consistent with truth: I cannot therefore consider Sir John's declaration as sufficient for overturning the great weight of evidence which the pursuers have adduced in this cause.

It gives me great uneasiness that I have been obliged to deliver the opinion which I have now given: But it would give me greater uneasiness to deliver, as my opinion, any thing contrary to the real sentiments of my heart. I feel for the defender; he is innocent; much do I feel for him: But, in a question of property, I must give my opinion according to the evidence before me. I have no latitude; I cannot turn either to the right or to the left, without doing injustice; and as I think it is proved, that the defender is not the son of Lady Jane Douglas, I cannot give my voice for continuing him in the possession of the estate of Douglas, by dispossessing him from the reasons of reduction.

LORD

L O R D H A I L E S.

FROM the whole circumstances of this proof, I am at length unwillingly induced to form this conclusion, that there is not sufficient moral evidence of the defender's being the son of Lady Jane Douglas. We are not placed in a world of demonstration; we must determine according to the probabilities of moral evidence; and they, I trust, are not so fallacious as they have been represented.

IN a cause of this nature, the character of the parties concerned must have considerable weight; and if I could persuade myself that the character of Lady Jane Douglas was altogether such as many of the witnesses suppose it to have been, it would have much influence in favour of the defender.

BUT, I am sorry to say it, there is evidence in court, that Lady Jane's real character was different from what it is supposed to have been; there is evidence that she could assume appearances at pleasure, and that she had not that sacred regard to truth which she ought to have had.

Thus,

Thus, according to Madame Negrette, “She spoke ill of no body;” yet, in a letter to Mrs Carfe, she pours out abuse on her own near relations, for having reported what she knew to be true, her marriage with Sir John Stewart.

SIR WILLIAM STEWART swears, “That she was particularly attached to the Presbyterian religion, and very strict in the observance of it.” Abbé Hibert swears, “That she seemed greatly to relish the doctrines of the Roman Catholic religion.” These sentiments are inconsistent; and yet I make no doubt that both Sir William Stewart and Abbé Hibert swore to the best of their judgment.

In her letter to Mr Haldane, 6th September 1747, writing to borrow money from him, she says, “I am sorry to be obliged to acquaint you, that the two seasons here and that at Spa have not altogether answered the intention of my journey; so am advised and determined to try the waters of Carlsbad in Bohemia, where I am in hopes of getting perfect health.” But, in her letter to Mr Moxmilie, 14th October 1747, asking the same to borrow money from him, and for liberty to inquire her friends, she says, “Be-
 “ cause,

“fured, travelling, with the waters of Aix
 “and Spa, has removed all my complaints;
 “and I want but to hear effectually from
 “you to be perfectly well.” And again,
 10th November 1747, “I do assure you my
 “health is very good, the Aix and Spa wa-
 “ters have removed my only former com-
 “plaints, which was lowness of spirits.”

To her friends in Scotland she mentioned her purpose of settling in Switzerland, where she might have the free exercise of her religion; and yet, at that very time, she was preparing to settle in the very heart of France, where she could have no exercise of her religion at all.

WHEN it suited her conveniency, she did not hesitate to assert what I wish I could find a gentler name for than that of untruth.

HER noted letter to Mrs Carse abounds with examples of this kind; and, by the way, that letter is a full confirmation of the evidence of a lady of character (Lady Catharine Wemyss) who, I observe, is treated with too much freedom in the defender’s memorial.

HER narrative to Lady Stair is another example of the same kind. Upon the evidence

of Mrs Primrose, I make no doubt that this narrative has been faithfully and conscientiously reported. Lady Jane told a most circumstantial story to Lady Stair, in which, it must be admitted, there was not a syllable of truth. How can this be reconciled with the exalted character of Lady Jane as described by many of the witnesses?

To say, that it is well known, that Lady Stair was dull of hearing, or may have mistaken Lady Jane, does not make Mrs Primrose's report the less credible. The defender, in speaking of a thing as *well known*, ought to have said, that Lady Stair was so deaf, as not to be able to hear distinctly a person talking with her singly and alone.

If Lady Stair was indeed so deaf, I desire to know why she came to be engaged, after the time of this conversation, as a mediatrix between two noble persons, upon occasion of an unhappy family-difference.

But why multiply examples of her art and insincerity? The defender has furnished a most striking example of it in the production of Lady Jane's letters, p. 851. 852.

Sam. writes to Sir John, 8th August 1752.
 "I am now so far on my journey. Mr
 McKercher is so good as to go a little way
 " with

“with me, though I opposed it; he having
 “so much to do. I shall not write again to
 “you, dear Mr Stewart, till I arrive at E-
 “dinburgh; so do not be uneasy and anxious,
 “I beseech you. *I have no franks*; therefore,
 “won’t put you to *unnecessary charges*, which
 “I hate to do. Pray remember, that the
 “maxim of savingness is the plan we ought at
 “present to walk by; when I am in Scotland,
 “you shall hear often from me. I shall *then*
 “have *franks* enough.”

SHE writes again 18th (August): “I am
 “now in my own country once more. The
 “people, as *we came along*, and here, seem, in
 “indulgence to me, to be highly delighted
 “with the children. Mr M’Kercher, in his
 “great civility and friendship, would give me
 “the convoy the first day. Mr Farquhar I
 “am obliged to also; he imagining the wine
 “I had taken would not serve out the way,
 “at his own expence, bought other four
 “bottles at a place he found it good.”

Suppose, that the question in issue were,
 Did Lady Jane Douglas go to Scotland by
 land in August 1752? I desire to know, whe-
 ther a strong argument for the affirmative,
 would not be drawn from those letters? If
 there were any jottings of a shipmaster,
 or

or any memorandum of a custom-house officer, from whence a presumption might arise, that she went to Scotland by sea, would not the superior evidence of those artless letters, full of minute circumstances, written by a lady of honour, be opposed to the jottings or memorandums of low obscure persons?

NEVERTHELESS, the defender has produced a letter from Lady Jane to Sir John's son, dated 16th September 1752, which proves, beyond possibility of cavil, that she made this journey to Scotland, not by land, but by sea.

As to the many letters between Lady Jane and Sir John, which contain expressions of affection for the children: I admit their weight in the scale of evidence for the defender. With respect to them, I must, however, make the following observations.

It is not reasonable to suppose, that any hint of an imposture could ever have been ventured in those letters.

MANY of the letters produced were written with the intention of being shown. This appears from the characters of persons therein drawn.

In none of the letters, is there the least insinuation of the reports spread concerning the children. Such reports had certainly reach-

ed the ears both of Lady Jane and Sir John ; and they must have been sensibly affected with them, upon the supposition, that the children were their own. This must have been uppermost in their minds. It was natural for them to unburden themselves to one another ; and yet they never touch upon this subject.

FROM the whole strain of the letters produced, it appears, that Sir John had obtained an amazing ascendant over the mind of Lady Jane ; and *this*, I am afraid, will afford a key to the whole conduct of the unfortunate Lady Jane Douglas.

ANOTHER argument in favour of the defender, arises from the proof of the pregnancy.

THAT Lady Jane had appearances of a woman with child, in the opinion of a multitude of witnesses, cannot in fair argument be disputed.

AT the same time, I think, that many of the witnesses, from one sort of prepossession or other, have represented those appearances of pregnancy in too strong a light.

In general, their ideas were formed upon the report of Mrs Hewit.

CARRIVATED by the address and insinuation of Lady Jane Douglas, some of the witnesses

nesses were ready to take every thing upon trust.

MADAME SCHOLL suspected, that Lady Jane was with child, after having learned her marriage. Her reason for suspecting the pregnancy was, because Lady Jane was *always* *weak, delicate, and pale*. Had Dubois, her landlord at Utrecht in 1746, been told of the marriage, he might, for the very same reason, have suspected the pregnancy.

MADAME GILLESSEN would not have observed the pregnancy, unless she had been told that Lady Jane was with child. Madam Gillesen suspected nothing till she heard of her flays being widened. Now, Bleyenheuft says, from her books, that the first time the flays were widened was 25th April 1748; that is, in the sixth month of the supposed pregnancy; it follows, that even in the sixth month of the supposed pregnancy, Madame Gillesen perceived nothing.

MADAME MESBACH thought that she was with child, because she had "*le visage tiré et Pair de fille*." The same appearances might have been discerned in 1747 or 1749, when she was confessedly not with child.

The nuns at Aix-la-Chappelle, not very competent judges of such matters, suspected

that she was pregnant from the time of her first visit to the convent. What was the date of the first visit, does not appear from the proof; but as Lady Jane went to the convent to visit Madame Martel, an old acquaintance, it is probable that her first visit was soon after her arrival at Aix-la-Chappelle in April 1747, or soon after her return from Spa in the same year; and if so, then the nuns suspected that Lady Jane was pregnant at a time when no marks of pregnancy could appear.

THE evidence of Madame Tewis goes too far; from that evidence it might naturally be concluded, that Lady Jane lodged in her house, while the pregnancy was well advanced; whereas she left it in December 1747.

SOME of the witnesses speak of the great size of Lady Jane's breasts, Madame Negrette of their hollowness; nothing can be more opposite than breasts larger than ordinary, and "*la gorge plus enfoncée qu'à l'ordinaire*;" which of them am I to believe?

MRS GREIG may be a very honest evidence. I have no right to doubt of her honesty; but she is over-run with prejudices. Thus she says, none of the French Ladies were like her own mistress Lady Wigton,
and

and none of the French children like the defender.

MISS PRIMROSE may be a very honest evidence; but she is too apt to catch at circumstances. Witness her remembering Pier la Mare as the name of the *accoucheur*, and Meilmentain as the name of the village where Abolto was nursed.

The multiplicity of miscarriages throws a doubt upon the evidence of the pregnancy.

WHAT authority is there for doubting, that Mrs Hewit told Madame Negrette of a miscarriage in Holland? Mangin's double miscarriage is now given up. The miscarriage mentioned by Madame Rutlidge is also given up.

MADAME RUTLIDGE cannot mean the second miscarriage mentioned by Mangin, as the defender supposes; for Mangin has fixed upon a certain date, namely, about two months and a half after the former one, that is, about February 1749. Now, Mangin was dismissed from the service in April 1749, as appears by Madame Mayette's evidence, (and Lady Jane's pocket-book); but Madame Rutlidge did not see Lady Jane till June 1749; so that Madame Rutlidge's miscarriage and Mangin's

Mangin's second miscarriage cannot be the same.

THE miscarriage mentioned by Mrs Maitland, cannot have been the one at Rheims, unless by changing the time, place, and persons therein mentioned.

THE defender supposes, that Mangin, a married woman, mistook the *catamenia* for a miscarriage. Why may not Isobel Walker, a virgin, have made the same mistake?

If the question were as to proving the possibility of Lady Jane's being with child, from the evidence of miscarriages, Would not what has been observed shake the foundations of that evidence? Are the evidences of the pregnancy less ambiguous?

FURTHER, I observe from the letters written by Sir William Stewart and Lord Dumbarton, unknown to each other, that some very extraordinary and interesting event was hoped for and expected, from the birth of a child of Lady Jane Douglas and Colonel Stewart. May not this have made the idea of the pregnancy to be entertained with more facility and eagerness of belief?

THERE is an additional reason which inclines me to believe, that the appearances of pregnancy have not been so extremely remarkable

markable as some of the witnesses represent them; and that is, their having escaped the observation of many witnesses, and those not the least credible in this bulky proof.

SUPPOSE that the following had been the only witness examined, What is there in their depositions which shew that they observed the marks of pregnancy about Lady Jane Douglas?

1. LADY CATHARINE WEMYSS, as credible a witness as any of the nuns, had frequent occasion to see Lady Jane from November 1747 to the 10th of February 1748; yet she saw no appearance of pregnancy.

2. JAMES KILGON of Dudwick, who knew her formerly, and who was informed of her marriage, saw her in April and May 1748, and was the bearer of her letter to Mr Haldane, 12th May 1748; and yet he perceived nothing.

3. LIEUT WILSON, her intimate friend, saw her daily during the month of May 1748; and yet made no observations herself; she assented to the report she heard from others.

4. GEORGE traveled with her for days together in a stage-coach, about the beginning of June 1748. This man is a notary, and his evidence is as minute as if he had

been engaged à dresser un proces verbal; he appears to have been abundantly inquisitive and forward, not to say impudent; and yet he observed nothing of pregnancy.

5. YOUNG Mr Andrieux had repeated opportunities of seeing her in June 1748; he has the rare felicity of being applauded by all parties; and yet he observed nothing.

THE same is the case of Major-General McLean, who sometimes visited in her house during that period, and who saw her set out for Paris. He is a gentleman of known and established reputation.

I say nothing of the Demoiselles Hlibert and Mademoiselle Sautrè; for their credit is questioned, because they answered as witnesses upon a citation of a court of law in their own country, which they could not disobey.

BUT the other witnesses must be considered as worthy of credit; for they never knew the horrors of the *Tournelle*, nor heard the thunder of the *Monitoire*.

I desire to know, whether the evidence of all and every one of those credible witnesses would prove, that they had observed even the apparent marks of pregnancy in Lady Jane Douglas; and yet their observations must

must have reached from the very first weeks of the supposed pregnancy till within eight days of the supposed delivery at the full time.

If such be the case, I cannot imagine that the appearances were so violent, and indeed so excessive as they are described by others of the witnesses, and particularly by Isobel Walker and Mrs Hewit.

COULD I give full credit to Isobel Walker, the evidence in this cause would be more *in æquilibrio*, and it might be more difficult to determine on which side the balance inclined. But I cannot help considering her as a witness partial and deeply prejudiced. I shall mention the circumstances which strike me most strongly.

I dwell not on smaller circumstances, such as her endeavouring to make Mr James Johnston pass for a person little connected with Sir John Stewart and Lady Jane Douglas; her saying, that Lady Jane explained La Morte's letters to her in English, at the time when she herself certainly understood French; her conversation in German with Madame Gilleßen, and in French with Madame Andriens: Her want of memory as to the conversations which she had with Mrs Hewit,

concerning the transactions at Paris; and her amazing want of curiosity in never reading the evidence of Sir John Stewart and Mrs Hewit, though it was put into her hands.

THERE are three particulars which convince me, that Isobel Walker is partial, and deeply prejudiced.

1. WHEN formerly examined, she swore, “ That she had occasion *frequently* to see Lady Jane’s *naked breasts* and *belly*, both before leaving Aix-la-Chappelle, and after they came to Rheims; and that the deponent has had her hands upon Lady Jane’s *naked belly*, and found her with live child; and that this she would depone, if she was going to step into eternity, whatever *wretches* may say to the contrary.”

This is positive indeed, and asserted with an uncommon degree of asperity; nevertheless, when examined *ex officio* by your Lordships, she says, “ *That it was not Lady Jane’s naked belly that she felt*, when she found the child move, but above her shift, as she thinks.” So that the material epithet *naked* is left out. How is this to be reconciled with the positive and solemn averment which she formerly made?

SHE

SHE adds, " That before her feeling the
 " child in Lady Jane's belly, she never had laid
 " her hand on the belly of any other woman
 " with child, or found the child move; and
 " that she thinks, it was only at one time,
 " that she felt the child move."

If Hobel Walker is right in the era, at which she supposes this to have happened, when she mentions it as happening just before the widening of the flays, then it was just before the 25th of April 1743, that is, in the sixth month of the supposed pregnancy.

Now, Is it not wonderful, that she should not have had any occasion to make the like observation, during all the months of May and June; *ſhe*, who was constantly employed in dressing Lady Jane, and in aiding her to go into bed, by means of a box seven or eight inches high?

Is it not also improbable, that Lady Jane's situation should, even at that time, in the end of April, have been so little determined, that there remained a doubt, whether she was troubled with life, or was a woman far advanced in her pregnancy?

or possibly, that Hobel Walker had fixed upon a more early era for this singular and solitary observation; this would vary, but

not remove the improbability; the consequence would be, that she felt a slight motion like that of a pulse beating; but did not feel the more frequent, and more violent motion of twins, while the proper period for delivery was approaching.

She does not make her narrative the more probable, by saying, that Lady Jane wore no bed-gown. I greatly doubt the fact: There is something in Mrs Hepburn's evidence that seems to contradict it; nor can it well be believed, that Lady Jane, who complained excessively of cold weather, and who was certainly indisposed with vomitings, did nevertheless wear no bed-gown.

BE this as it will, I cannot see how this motion of the child should have been felt but once; or how a person who never had had occasion to feel any thing of the same nature, should have been so positive in her averments.

2. ISOBEL WALKER has sworn that she received the letter from Mrs Hewit of the 22d July, previous to one acquainting her of Mr Andrieux's supply of money: "In which letter Mrs Hewit said, that though my Lady had a good deal to do with money, yet, she believed, she would send for the deponent and Essie Caw."

Now,

Now, I think I can prove, to your Lordships satisfaction, that Isobel Walker has here sworn to the contents of a letter which she never received.

The letter which she mentions could not have been written after the 26th of July; for, in the letter of that date, Mrs Hewit says, "She is recovered to a wonder, not indeed
" without the greatest care. She is still very
" weak; and her doctor has ordered her to
" be taken to the country in eight days, to
" make her perfectly fit for her journey home.
" She was fully resolved to have sent for you
" both the time she was to stay; but as the
" doctor is positive he will have her to the
" country, she has such a good opinion of you
" both, as to think the disappointment of not
" coming here just now will be small."

AFTER writing this letter, Mrs Hewit could not write, that "she believed my Lady
" would send for the maids;" and this the more especially, because the plan here mentioned of going into the country was actually followed at the time proposed.

NEITHER could the letter in question have been written between the 22d, the date of the former one, and the 26th, the date of this one; for Mrs Hewit, in this letter of the
26th,

26th, writes, "Just as I was set down to write
 "to you, I got your's, wrote on the same day
 "I wrote you, which was the 21st day, tell-
 "ing you the happy news."

THE expression seems to exclude the idea of an intermediate letter; and this may be confirmed by the following observation.

THE defender's hypothesis is, that the letter 22d July was written on the 21st, but dated 22d, because it was to be dispatched on that day. By parity of reason, the defender must hold that the letter 26th July was written on the 25th, but dated 26th, because it was to be dispatched on that day. Now, according to this hypothesis, when must the intermediate letter in question have been written? It is not probable, that Mrs Hewit would write a letter on the 22d to be dispatched on the 23d, because she had already dispatched a letter on the 22d; and if she had written on the 23d, to be dispatched on the 24th, why write again on the following day, the 25th, which the defender must suppose to be the date of the letter 26th July?

3. ISOBEL WALKER depones, that in Mr Murray's dining-room, Sir John received a letter from La Marre; that this letter was sent
 by

by a friend of La Marre's; and that it contained compliments to Mrs Hewit.

ISOBEL WALKER told more circumstances to Mrs Hepburn; nor has she ever denied her conversation with Mrs Hepburn, or pretended that Mrs Hepburn had related more than really passed at that conversation. Take her oath and Mrs Hepburn's together, and it is plain, that the famous fourth letter is meant.

Now, it is in proof that Lady Jane left Mr Murray's in September 1751; yet the fourth letter from La Marre is not dated earlier than 9th June 1752. Has not this all the appearance of an unjustifiable inclination on the part of the witness to corroborate the evidence supposed to have arisen from those fatal letters?

I proceed now to consider the chief circumstances of evidence on the part of the pursuers. And here I begin with the evidence arising from Sir John Stewart's declaration.

An apology for the inconsistencies and improbabilities of that declaration is drawn from the vivacity of Sir John, and his own confidence in the goodness of his memory. But it must be observed, that Sir John, in his
answer,

answers to the questions put to him, does not so much confide in his memory, as to be equally certain of every particular. On the contrary, he is careful to distinguish what he remembers precisely, from what he is less positive of. Thus, for example, in his answer to the thirty-third interrogatory, he says, that he *knows*, that he *believes*, that he is *convinced*, that he is *not sure*, that he is *not positive*, that he does *not know*, that he *cannot recollect*; that *so far as he remembers*, he did not see any of his countrymen at Peltier's coffee-house, except Con; and that while at Paris in 1748, *he did not see Clanronald*.

HERE all the different modes of speaking, from positive affirmation, to positive denial, do successively occur; and this has not the appearance of a man who trusted too much to his memory, who was precipitate in his answers, or who, from a lively imagination, was ready to remember things whereof he knew nothing.

BUT supposing that his vivacity and lively imagination should have so far misled him upon his solemn examination in a court of justice, the same supposition will not apply to the accounts which he gave to Mrs Napier, when asked by her to give an account of the principal

pal circumstances relating to the transactions at Paris in 1748, he did not, from his lively imagination and confidence in his memory, proceed to tell her a circumstantial story; on the contrary, he hesitated; he made excuses for not remembering; but, upon being pressed by a woman of excellent understanding, to relate the circumstances whereof he was certain he gave her the outlines of that narrative which he made at greater length before your Lordships.

It has been further said, “ That Sir John “ was very apt to forget *dates* and names; yet “ had a very good memory of persons and “ facts.”

I grant that Sir John has mistaken some dates; whether he was apt to forget names, may be collected from the names which he remembered.

He remembered,

1. THE name of the inn-keeper whose house he first went to at Paris, and the street of his residence, *Godefroy, Rue St Martin.*

2. THE name of the person in whose house he lodged while at Paris in 1748, *Michell.*

3. THE name and residence of the person who kept the coffee-house which he frequented, *P. Boissier, quai Pelatier.*

He e

4. THE

4. THE name and situation of the tavern where he was in use to drink with his twenty-seven years acquaintance, Pier la Marre, *Sources de Bourgogne, Pont St Michell.*

5. THE name of his correspondent at Rheims, *Monsieur Andrieux.*

6. THE name of the village where they went on leaving Paris, *Dammartin.*

7. THE name of the place where Mr George Leslie resided, *Villers Cotterets.*

8. THE name of the defender's last nurse, *Manger*, which is the same in his way of pronunciation as Mangin.

THAT he particularly remembered the names of his acquaintance at Rheims, appears from his declaration, where he mentions the receiver-general's Lady, Madame L'Elue, the syndic's Lady, Madame Maillefer; and from his letter to Monsieur Maillefer, 18th January 1763, where he mentions Monsieur Maillefer of the regiment Royal Champagne; he also remembered where Clanronald lived, at a house about two leagues from Paris upon the side of the observatory.

HAVING thus mentioned the names which he remembered, let us now examine what names he *forgot*.

He forgot,

1. The name of the street where La Marre lived.

2. The name of the street in which Madame le Brun lived, tho' he described it in a very special manner, as lying on the left hand when one goes from the *Pont Neuf* to the *Luxembourg*, by the *Rue de la Comedie*, in the *Quartier St Germain*.

3. Which was just as natural, he forgot the name of the street where Michell lived.

4. The name of the village at which Sholto was nursed; tho' he described it exactly, as being "two or three leagues from Paris, upon the Amiens road."

5. The name of Mr Tassin, from whom he received a considerable sum of money immediately after his arrival at Paris.

6. The name of Mr Pannier, with whom he had a correspondence, in consequence of his *rapidity*, as he calls it, in taking double payment of the same quarter's annuity.

7. The names of all the nurses at Paris, and particularly of the nurse Favre, though he remembered her name many years after - which as appears by his note to Mr Loch.

But that he should not remember the names of any at, or of his late-lodgers, is not extraordinary;

traordinary; it would have been more extraordinary had he remembered them; so that, as to this, there is no occasion to find an excuse in his age and infirmities.

It is strange, that he should have forgot all those names; for they are all of great moment; and where-ever any of them have been discovered, such discovery has tended to establish material facts.

THE inference which I draw from these observations is, that Sir John's memory was far from being defective as to *names*, when he chose to remember. His memory, as to dates, may have been less distinct, though still it has the appearance of being distinct enough. Indeed a cause may be assigned for his *not remembering* some names, and for his *mistaking* some dates.

I do not propose to go through all the remarkable circumstances in Sir John's declaration. In this I have been, in a great measure, anticipated by some of your Lordships.

I shall, however, speak to some particulars, which have been either omitted or not fully treated.

SIR JOHN'S first journey to Paris, in June 1748, is acknowledged by the defender to be a mistake, or more properly, it is a fiction.

THE

THE defender apologizes for this part of Sir John's narrative in the following manner: "Sir John was at Godefroy's in August 1748; "but was not there in June 1748. He mistakes the æras, and acknowledges a journey to Paris in June; but denies *that* in August. This is from want of memory. "In like manner, he denied his having visited Mr Hepburn at Boulogne, till the visit "was proved by the circumstance of a night-gown, and an Amiens pye."

HAD nothing more been supposed to have happened on the first journey to Paris in 1748, than the presenting a night-gown to a friend, or eating a part of an Amiens pye with him, the defect in memory might have been excused; but *here* the subject of the journey to Paris was no less than that of securing a midwife to Lady Jane. Besides, Sir John had reasons for not remembering the journey which he *made* to Paris, as well as for remembering the journey which he did *not make*; an acknowledged residence at Godefroy's on the 8th August 1748, would have added to the credibility of Godefroy's testimony that he knew Sir John, and had not a month before entertained him in his house for upwards of a week.

SIR JOHN'S account of La Marre, in itself improbable, becomes more so, as he mentions farther circumstances.

HERE is a man called up to Paris about an *affaire epineuse*, and declining to tell his lodging; yet walking every day, and sometimes twice a-day, in the public gardens, and habitually frequenting a coffee-house.

SIR JOHN intruſts the care of Lady Jane to a man whom he did not know how to find, excepting in the morning, and perhaps in the afternoon. Had Lady Jane been ſeized with her pains in the night-time, Sir John admits, that he would have had another *accoucheur* to ſeek, where he beſt could. But this is not all; for, if Lady Jane had been ſeized with her pains on a rainy day, Sir John would have had another *accoucheur* to ſeek; nay more, the ſame thing might have happened, had her labour come upon her in the afternoon; for La Marre's *reſidence* in the Thuilleries or Luxembourg gardens, was not certain, but only occaſional in the afternoon.

NOTWITHSTANDING this monſtrous improbability, Sir John perſiſts in it throughout his declaration; and to rivet it the faſter, he mentions the manner in which he addreſſed his

his letters to La Marre: *à présent demeurant à Paris, au bureau de poste*; which address proceeds upon the supposition, that he did not know La Marre's abode.

When Sir John came to be again examined, there was an absolute necessity of his having been in the knowledge of La Marre's residence. In 1749, he was to find *him*, in order to find Sholto. La Marre might, in July, be found walking every morning in a public garden. But how could this happen in the month of November? To overcome this difficulty, Sir John, at his second examination, recollected, that La Marre had at last disclosed to him the place of his abode; but *where* it was, Sir John could not remember.

This recollection was very critically timed; for, without it, Sir John could not have got his son Sholto immediately upon his arrival at Paris, which was his intention, when he proposed to remain at Paris for *one night*. Had he, upon his arrival at Paris, wrote to La Marre, by his address, at the post-house, he might have waited for days before La Marre chanced to call at the post-house.

SUPPOSING that this recollection of Sir John's is right and agreeable to truth, the next question occurs, How came Sir John, for

fifteen or sixteen months, to be constantly writing to La Marre, *au bureau de poste*, while he knew his address? If it be answered, that, in this also Sir John was in a mistake; why is any other particular in his declaration to deserve credit?

ONE thing is plain, that, if the man-midwife intended by Sir John in his declaration, had been a practising man-midwife, having his fixed residence at Paris, there could not have been this uncertainty about his address.

The next thing that I shall mention, is the *smoaky house*, which they were obliged to leave, as Sir John told Mrs Napier. What house was this? It could not be Godefroy's; for there is not the most remote insinuation, that the scene of the delivery was ever intended to be laid at Godefroy's. It could not be Michell's; for they went from it to the country, by advice of the doctor, as Mrs Hewit says. It could not be Le Brun's; for that house is mentioned as being over-run with bugs, and is distinguished from the smoaky-house. It follows then, that the smoaky-house was a non-entity, and only introduced when a woman of uncommon penetration put more questions to Sir John than he was prepared to answer.

IF there was a smoaky-house, it was *one* which Sir John could not acknowledge in his declaration before the court.

SIR JOHN, in giving an account of Sholto's nurse, says, that " she lived two or three leagues from Paris, upon the Amiens road." This is exceeding remarkable; a La Marre, a Walloon surgeon, accidentally at Paris about an *affaire epineuse*, knew of an excellent nurse two or three leagues from Paris upon the Amiens road. This, in itself, is not a probable story; but it agrees excellently well with Mrs Hewit's account of a farmer's wife, and of going a good way to find her. It also accounts for this extraordinary circumstance, that Sir John, while at Paris, never visited the child.

When Sir John came afterwards to make oath in this cause, he took an opportunity of saying, " That the village where the nurse lived was but a little distance from Paris." It will not escape observation, that, by this time, Sir John had heard of the Parisian La Mure; and it seems pretty plain, that he was inclined, if possible, to adapt his former story to new discoveries. But it surpasses all belief, that Sir John should have mistaken *Hutebrowe*, a place close upon the gates of Paris, and not

on the Amiens road, for a place two or three leagues from Paris on the Amiens road.

It is not enough to say, as the defender does, "That Sir John was mistaken, and that his memory was far from being accurate in such matters." If a man should affirm, that his child was nursed at a village five or six miles from Edinburgh on the road to North-berwick, and an attempt should be made to shew, that a child nursed at the Cross-cameway on the Dalkeith road was that man's child, would it be enough for reconciling the hypothesis with the affirmation of the man, to say, "that he was mistaken, and that his memory was far from being accurate in such matters?"

The whole story of La Marre is essentially absurd and inconsistent from beginning to end. It may be fit to take the whole of Sir John's account of La Marre in one view. He met him by accident in the Thuilleries in summer 1748. La Marre said that he had been called up to Paris about *an affaire épineuse*, and that he believed he would continue there for some time. Sir John continued to correspond with La Marre at Paris till the end of the year 1749. In 1752, he writes to La Marre still supposing him at Paris; for, as he says,
the

the address was, at the post-house, Paris; by this time the *affaire épiscopale* must have lasted four years. La Marre answers full from Paris, says he had been at Naples and proposed to return thither. Sir John, when examined, says, that he knows nothing more concerning La Marre, but that it is probable that he is about Liege, where their acquaintance commenced. Why did he think that he was about Liege rather than at Naples or at Paris? The beginning and the end of this story are inconsistent.

I shall admit, that the Tournelle process may have deterred Sir John from going to Paris, by reason of the *great* danger he ran of being put to the torture.

—*Sicbat quæ si barlans*

To be pursued —

But those apprehensions could not have prevented him from going to the country of Liege, where he thought it was probable that La Marre was to be found; La Marre, the conclusive evidence of *his* innocence, and of the defender's birth. At Liege, Sir John would have been in safety, out of the reach of the French church, and of the French state.

ACT III.

AFTER all the attention I have bestowed on this proof, it is impossible for me to connect the *Parisian* Delamarre with the La Marre described by Sir John Stewart.

IT has been said, “ That there is nothing
 “ incompatible in the appellation of Walloon,
 “ which Sir John gives to his La Marre, with
 “ that La Marre who was a native of *Montreuil*
 “ *sur mer* in Picardy : That the antient divi-
 “ sion of France was into the *Pais Romain*,
 “ where the Latin language was used, and the
 “ *Pais Gaulois*, by corruption *Walloon*, where
 “ the antient language of the country was re-
 “ tained : That, according to this division, the
 “ *Artois* was in the *Pais Gaulois*; and that Mon-
 “ treuil, though in Picardy, which was part
 “ of the *Pais Romain*, is situated upon a river
 “ which takes its rise in the *Artois*; that there-
 “ fore there was no great impropriety in Sir
 “ John’s giving a native of Montreuil the ap-
 “ pellation of *Walloon*.”

THE observation is exceedingly ingenious; but it may be answered, that it is more probable that Sir John would speak according to vulgar usage, than according to an antient geographical division of countries. In common language, a Picard is never called a Walloon : and indeed, according to this apology
 for

for Sir John, the argument in his favour would have been more conclusive, had he thought fit to say, that his La Marre was a *Roman*, not a *Wallon*; for the province of Picardy where Montreuil is situated, is confessedly part of the *Pais Romain*.

THE last article which I shall mention of Sir John's declaration, is that relating to the four letters of La Marre.

THE four letters produced are not the composition of a Frenchman. This is so clearly proved, that there is no occasion to refer to the evidence of that proposition.

THEY are not all originals, or some copies, some originals, as Sir John has, upon recollection, declared; but they are *all* copies made by a person ignorant of the French language.

ALL the four letters are of one hand-writing, although the defender has, by mistake, supposed that a postscript to one of them is in another hand.

THEY are, in several places, *corrected* by another hand. This will be plain upon ocular inspection.

FROM internal evidence, there is the highest probability that those letters were composed by Sir John himself, and very prudently given

ven by him to be copied by a person who did not understand their contents."

THE person who transcribed those letters is still unknown. Sir John not only asserted, that some of them were copied by Mr Andrew Clinton, but took much pains to make Mr Clinton believe that he was the copier.

THE defender says, "That notwithstanding Clinton's disavowal, there is reason to believe they were wrote by him." How this is consistent with the known rules of evidence, I do not see. The letters do not resemble the hand-writing of Clinton: Clinton denies that he wrote them: That he did write them, there is no evidence but Sir John's declaration.

BUT further, Sir John's own hypothesis is inconsistent with the supposition of their being written by Clinton. Sir John says, They were copied while he himself lived at Bedei's in Southwark; and he gives the following account of the cause for which he had the copies made: "That Lady Jane, after her arrival in Scotland, having wrote to the declarant, then at London, desiring him to send down those original letters, the declarant gave them to be copied by Andrew Clinton, and also gave him some French pa-

" per

“per to copy them on; and, as far as the de-
 “clerical can recollect, he sent Lady Jane
 “these original letters, or the copies made
 “by Clinton, though he is not positive
 “which.”

Now Bedel swears, That Sir John left his
 house in May or June 1752, and Lady Jane
 did not arrive in Scotland till August 1752;
 therefore, according to Sir John’s hypothesis,
 Clinton could not copy the letters: Or, in
 other words, if in August 1752, or after that
 period, Lady Jane wrote for the letters, they
 could not, in consequence of her writing, be
 copied before July 1752.

Before entering into a particular disqui-
 sition into all those letters, it may be pro-
 per to say something as to the Grain of the
 fourth letter, 9th June 1752. It bears many
 internal marks of great art and deep contri-
 vance.

The plain purpose of it is to serve as a
 certificate to the following effect: “I Pierre
 “la Marre *accoucheur*, do hereby certify, That,
 “on the 10th July 1752, I delivered Lady Jane
 “Stewart, wife of Colonel Stewart, of male
 “twins. That Mrs Hewit was present at the
 “birth; and that the youngest of the twins
 “being weak, and in danger of death, I pre-
 “sented

“ formed the ceremony of sprinkling him by
 “ the name of Sholto-Thomas. In witness
 “ whereof, I have written and subscribed these
 “ presents, at Paris, this 9th day of June 1752.
 “ *Pierre la Marre.*”

WHEN this fourth letter is accurately examined, many remarkable circumstances in it will appear.

By mentioning his performing the function of a priest, the writer meant the *ondoyement*: But though he knew the thing, he seems to have been ignorant of the term; and therefore he uses an awkward circumlocution, which is also profane in the mouth of a Roman Catholic.

By making the certificate in the form of a letter, the difficulty and danger of forging the subscription of witnesses, or of a notary, are avoided. A formal certificate was obtained from Madame Tewis, concerning the marks of pregnancy; but there is only a letter produced as from La Marre. The reason of the difference may be easily found: She who was to give the formal certificate existed; the supposed writer of the letter was an imaginary personage.

By mentioning his journey to Naples, his long residence there, and his intention of
 soon

soon returning thither, an excuse was always ready for not finding La Marre either at Paris or about Liege.

By mentioning the disease in his breast, which had been relieved, but not removed, there was a probability established of La Marre's speedy death.

By providing, that the letter should be delivered by La Marre's friend, instead of coming by the post, the great difficulty arising from the want of a post-mark on a foreign letter was overcome.

THE mention of the profession of La Marre's friend, gave a more natural air to the whole. But circumstances which give an air of truth to a forgery, afford also the means of detecting it. Since the defender has not so much as endeavoured to show, that a miniature painter, of the name of Dubois, existed at London in 1752, I will presume, that he is a person altogether imaginary.

Any one who knows London, must know, that the existence of a painter may be easily proved; especially the existence of a portrait painter, and of one whose branch of business is that of painting in miniature,

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which

which few painters, comparatively speaking, profess.

THE defender might have learned any day at Slaughter's coffee-house in St Martin's lane, from the French artists who frequent that coffee-house, whether Dubois existed or not; and I am persuaded, that an inquiry, so obvious, and easy, and momentous, cannot have been omitted, when so many inquiries, less obvious, much more difficult, and of smaller moment, have been made.

THE mentioning the name of the child, is also remarkable; and not only the name which he is understood to have born in common conversation, but also the name of *Thomas*, probably from Sir Thomas Stewart, Sir John's father.

ANY Scotsman, unacquainted with the rites of foreign churches, would naturally conclude, that La Marre gave him the name of *Séolto-Thomas*, when he performed the ceremony of sprinkling.

NEVERTHELESS, it is certain, that a child at an *ondoyement*, receives no name at all. The name is given by the *parrains* and the *marrains*; and there are none such at an *ondoyement*.

PERHAPS

PERHAPS I have dwelt too long on the letters of La Marre. But the truth is, that I always considered them of exceeding moment in this cause. When I first heard of the service, and of the evidence *there* produced, I heard of the letters of a celebrated man-midwife; and I considered them as a very cogent proof on the one side: Now, that I am convinced, that those letters are absolute forgeries, I must consider them as a very cogent proof on the other.

I proceed now to make a few observations on the evidence arising from the letters and deposition of Mrs Hewit. And here, in the entrance, I must observe, that, although the defender represents Mrs Hewit, as a person having her memory impaired through age and infirmities; yet that, upon the most accurate examination, her memory appears to have been uncommonly tenacious.

In her depositions, she mentions *several* different dates; in *some* of them she is precisely right; in *few* she is nearly right: in one she is mistaken, from an error in calculation: in *few* dates relating to things of no moment, she appears to have been misled by want of memory.

THE remaining *five* dates are 1st, that they set out on their second journey to Paris in October 1749; 2^d, That they set out from Rheims for Britain about the first of November 1749; 3^d, The time spent in their journey to London; and here indeed, her calculation is monstrously erroneous. It is plain, that the journey from Rheims to London took up at most thirty-four days. She has made seven lie-days at St Omers, fourteen at Dunkirk, fourteen at Margate; and thus she has not left a single day, for performing any part of the journey. Here are three dates exceedingly mistaken; and, if Mrs Hewit thought it expedient to prove an *alibi* from Paris at the time of the *enlèvement* of Sanry's child, the mistake may be accounted for. The other two dates are the capital ones in this cause, the time of the departure from Godefroy's, and the time of the arrival at Michell's.

FROM this deduction, it will appear, whether Mrs Hewit's memory had failed her at the time of her examinations in the service, and before this court.

BUT supposing, that the ideas of Mrs Hewit were very naturally confused, whereof I do not see sufficient evidence, and supposing her
memory

memory to have failed before she was examined in this cause, whereof I think I have proved the contrary; yet still it cannot be denied, that during the space of a month after the 10th of July 1748, her memory must have served her as to daily incidents; more especially, when those incidents related to the things which the defender must suppose to have taken up her whole attention at that period: namely, the care of Lady Jane and the children.

If during that month she made a recital from time to time of what really happened, her recital must have been consistent.

THREE letters from her to the maids are produced; one of the 22d July; another of the 26th July; and a third of the 12th August, 1748. Isabel Walker says, that there were two more between the first letter and the last. But I have already attempted to shew, that Isabel Walker's memory is sometimes defective, sometimes exuberant. It is therefore just, that Mrs Hewit be tried upon the evidence of her own letters actually in court.

Now I must premise three propositions, which cannot well be disputed.

1st, THAT, when Mrs Hewit wrote, and sent off the letter of the 22d July, the nurse Favre, therein termed the *milk-woman*, had got the child, and was suckling him; 2^{dly}, That Favre continued to suckle him, while the family remained at Paris; 3^{dly}, That she went with them to Dammartin, and continued to suckle him there, until he was delivered over to Mangin.

THE *first* proposition is clear from this: That parties are agreed that the family was at Michell's on the 22d; and that the child had no milk-woman but Favre at that time.

THE *second* and *third* propositions are proved by Favre, who is a witness against whom the defender can take no reasonable exception; for that her prejudices are in favour of the defender and his cause. All things considered, such prejudices are natural. There is internal evidence of them from the circumstance that she mentions of Mrs Hewit's pronouncing the word *doux*; from whence the witness conjectures, that Mrs Hewit meant to say, that the defender was one of twins.

Thus much having been premised, let us inquire into the accounts given by Mrs Hewit, in her letters concerning the eldest child.

Her letter of the 22d July would insinuate, that the eldest child had only one nurse before the *milk-woman* or Favre: "He
 " the youngest) agreeing so well, (with the
 " country, or with being out of the house),
 " we are fond to send the other (that is out
 " of the house); some days after your master
 " went out to see him, and found the nurse
 " drunk; upon which he sent the coach for
 " me, and we brought him with us. *We*
 " have got a fine milk-woman, till we get a right
 " nurse."

The expressions, "*send the other,*" and your master went out, would naturally imply, that the eldest child was sent to the country; but as the expressions may only imply *out of the house*, not *out into the country*, it is best to understand them in the sense least liable to exception.

On the 26th July, she writes, "Ill luck be
 " brought to his *brother*, poor man; but has at
 " last got a fine one, and he not a bit the
 " worse."

As, at this time, the child was continued to be nursed by Favre, it follows, that Mrs. Hailes's *brother*, and *at last* getting a fine one, must have meant to make the maids believe that previous to Favre, he had *more*
nurses

nurses than one; the least that is possible to be conceived is, that he had *two* before Favre.

So stands the calculation on the 26th July: Next, comes the letter 12th August, by which time he had been put into the hands of Mangin.

At the 12th of August, then, he must have had *three* nurses according to the letter of the 22d July; 1. The drunk woman; 2. Favre; 3. Mangin. But according to the letter of 26th July, he must have had four nurses; 1. and 2. two nurses before Favre; 3. Favre; 4. Mangin.

On the 12th August, however, the scene changes. "Our dear little man that is with us, "he has been the most unlucky, poor dear, in "his nurses, *no less has he had than five, all good " milks, but base jades, would not come along with " us for love nor money.*" She then mentions the reaper, Mangin, whom they had procured in their distress for want of a nurse.

It follows from the letter of the 12th August, that the defender had *five* nurses before Mangin, who were *all good milks, but base jades, that would not come along for love nor money.*

How are the five to be made out? By the letter of the 22d July, there were only two; 1. The drunk woman; 2. Favre. Again, by the

the letter of the 26th July, if there were two, before Favre, the drunk woman and another, still there would be two wanting to complete the number of five; and even this, upon the supposal that the drunk woman was a *good milk*, and one whom they would have desired to go along with them.

In order to reconcile the letter of the 26th July with that of the 12th August, we must suppose that the defender had *four* nurses before he got Favre; that is, that he had changed *four* nurses before the 22d, or rather before the 21st, when the letter was wrote; and indeed, according to the evidence of Michell's family, by the 20th. But how can this be reconciled to probability, or to the letter of the 22d; more especially as it is said, that the defender was tickled for some days by the drunk woman?

If the defender was born on the 15th July between three and four in the afternoon, the soonest that he can be supposed to have been ready for a nurse, or a nurse ready for him, must have been the morning of the 11th. Supposing that the drunk nurse staid but a day in the lodging with him, and had him but *two* days with her in her own house, which is the most limited explanation of *few days*, here are three

days consumed. The milk-woman, Favre, could not be got latter than the 21st; here then are ten days before she was got; *three* at least are taken up by the *drunk nurse*; so that, in the remaining *seven* days, there were hired for the defender three *nurses*; and during that period, all *three* dismissed, not because they were bad nurses, but because “they were base jades, who would not go to Rheims for love nor money.” It is plain, that this could be no reason for dismissing three nurses before the defender was ten days old.

It would be straining beyond measure to suppose, that Mrs Hewit, by saying “no less than five, all good milks,” meant that he had the *offer* of no less than five; for, besides that the words do not bear this sense, she adds in the same letter, “*in spite of all that*, he is the stateliest dear.” This necessarily implies, in spite of his having changed so many nurses.

MRS HEWIT, in her examinations, gave an account of the nurses different from any of the accounts contained in her letters. Her hypothesis is as follows,

THE first nurse procured by Madame le Brun continued with the child till Sir John found

found her drunk, and then the child was brought to Michell's, where it got 2d nurse, the milk-woman Favre; 3d nurse who was procured by Sir John, and proved a bad one with no milk; 4th, the milk-woman got back for the second time; 5th, the nurse Mangin.

WHEN this hypothesis is considered, it must be acknowledged to be very ingenious. It reconciles the letter of the 22d and 26th July. Thus, on the 22d, they had quitted the drunk nurse, and got the milk-woman, by the 26th, they had got and had dismissed the nurse with no milk, and had got back Favre; and therefore, it might be said, that the child had had ill luck to his nurses, having changed two, the drunk woman, and the woman; without milk; and that he had now got a fine one, (*i. e.*) the milk-woman Favre for the second time.

BUT this is still irreconcilable with Favre's evidence, and with the five nurses changed before the 12th of August.

THE *roll* of nurses in her letters 22d and 26th July, and in her depositions, will never answer to her account "of *five good milks*, who "would not come along with them for love "nor money." The drunk nurse could not be said to be a good milk, or one whom they desired

fired to go along with them. The nurse with no milk, and who was branded as a thief, could not be a good milk, or one whom they desired to go along with them. The other two nurses besides Favre, are, in all probability, imaginary; so that, "*the five base jades*" "*with good milk*," are reduced to the solitary Favre.

FROM what has been said, it appears, that Mrs Hewit, when her ideas were clear, and her memory entire, has endeavoured, by heaping up minute circumstances, to show the distress they were in for nurses, the difficulties they were daily encountering, and the great care and concern for Lady Jane and the children, expressed both by Sir John and herself; but that, in entering into this detail, she has both contradicted herself, and the unexceptionable witness Favre.

FURTHER, Mrs Hewit, in her letter of the 26th July 1748, speaks of the Doctor having ordered Lady Jane to the country in eight days. It must be admitted, that this means to convey the idea, that at this time there was a Doctor attending Lady Jane.

I think that there is convincing evidence, that there was no Doctor attending Lady Jane at that time; and that this may be proved
without

without having any regard to the evidence of the people in Michell's house.

FROM Favre's evidence it is plain, that she never saw a man-midwife or physician about Lady Jane or the child. Favre had the child under her care from the 21st July at latest: It is impossible to suppose that the man-midwife was in the course of visiting Lady Jane after the 21st, and yet, that he never was taken to visit the nurse and child, who were either in the house, or within a door or two of it; a child almost starved by a bad nurse; a nurse taken at a venture to supply her place; an anxious mother, a fond father, a careful female companion; and yet the man-midwife attending Lady Jane was never sent to examine the condition, either of the nurse or of the child! This pales belief!

It would consume too much time were I to take notice of all the contradictions and improbabilities in Mrs Hewitt's evidence. One circumstance, however, I cannot omit.

Sam has sworn, that "he had no conversation with Lady Jane concerning the man-midwife, prior to the delivery." If this is true, and supposing, as we shall hereafter, I will be bold to affirm, that it is, against a fact, not to be paralleled in the history of the accuser.

That the confident of Lady Jane, her fingle acquaintance in a ftrange country, fhould never have any converfation with her concerning a perfon whom they had come fo far to feek; a perfon who was to be employed in the office the moft interefting that could be imagined! This circumftance has always ftruck me, and I cannot account for it upon the common principles of human nature.

It is further to be obferved, that Mrs Hewit herfelf fays, That Lady Jane would have lain in at Madame Obin's houfe in Bruffels, had not Mr Obin been called away. Mrs Hewit muft mean, that Lady Jane informed her of this. She further fays, That Lady Jane had no nurfe befpoke, and would not allow one to be befpoke; becaufe fhe did not know whether fhe would bear a living child. She alfo fays, That Lady Jane asked Madame Andrieux about midwives at Rheims, heard her anfwer, and interpreted the converfation. Here are converfations about the place of lying in, about the procuring or not procuring a nurfe, and about the ignorance of the midwives at Rheims; and yet there was never any converfation about the perfon whom Lady Jane was to employ at her delivery. How can thefe things be recon-

reconciled? Can I believe them all? or which of them ought I to believe?

I come now to an unexceptionable, though a *Tournelle* evidence; I mean not Godefroy, but Godefroy's books.

THE residence at Godefroy's is one of the capital articles of the cause; for if it be once established, that Sir John and Lady Jane resided at Godefroy's until the 14th July, or past the 10th of July, the whole system of the defender, and every prop and pillar of it, fall at once to the ground.

THE more I examine those books, the more I am persuaded of this proposition, That Sir John and Lady Jane were at Godefroy's upon the 10th of July 1748.

THE following particulars seem clear :

1st, THAT the blank article in the household-book, *Jeudi, 4me Juillet*, relates to a company of *three* people at three livres *per* head. There is neither evidence nor probability, that any company ever came there and resided at the rate of four livres ten sous *per* head; and I cannot explain this article in a different manner from the other articles in the books.

2^{dly}, THAT it relates either to a man having

ving persons of another sex with him, or to a man who acted as the master of a family.

3dly, THAT it relates to a company which entered in the evening of the 4th of July.

4thly, THAT it relates to a company of three persons having no servant with them.

5thly, THAT the article, "*Monsieur a payé et recommencé*," relates to the same company for whom an account was opened on the evening of the 4th of July.

ALL this appears from written evidence, and would equally well appear, although Godefroy and his wife had died fifteen years ago, without being ever examined, as it can do now while they are alive, and stand as witnesses in this cause.

Now, the time of entry, the number of persons, that one of them was the paymaster, that they had no servant, do all precisely agree with Sir John Stewart and his company.

THE question then is, How is this article to be discriminated from Sir John Stewart and his company? By *article*, I mean *both articles*, as they confessedly relate to one company.

THE defender's hypothesis must be, that an account was opened in Godefroy's household-

hold-book for a company, as entering on the 4th of July after dinner : That this company consisted of three persons ; that one of them was the paymaster ; that they had no servant with them ; and that this company was different from Sir John Stewart's company, although agreeing with it in all those particulars.

To suppose that Godefroy kept a *third book*, is contrary to evidence, and without probability.

To suppose that the nameless company consisted of two persons at four and a half livres *per* head, is an ingenious conjecture ; but, besides other objections, is liable to this, that the defender has repeatedly asserted, “ that the book in question was merely a “ book for the ordinary of the house ;” and it is agreed, that that ordinary was at the rate of three livres *per* head.

The defender's hypothesis does further suppose, that *they* were in the house on the 7th of July, and yet were not inserted in the police-book, while Sir John Stewart and his company were, and that *they* had an account entered for them in the head-book, while Sir John and *his* company had none opened for them : or, in other words, that *they* were

in the household-book and not in the police-book, while Sir John and *his* company were in the police-book and not in the household-book.

FURTHER, as the defender holds, that the *inspecteur* actually visited the house on the 11th July, his hypothesis must lead him to maintain, that this nameless company escaped not only one *visa* of the *inspecteur*, which is common, but two *visas*, that of the 6th, and that of the 11th.

ALL this is possible; because all this does not infer an absolute contradiction; but it is exceedingly improbable, as every one at first sight must perceive.

BUT the great improbability of this hypothesis, and consequently the great probability of the contrary hypothesis, will further appear, when it is considered, that, in the whole of Godefroy's police-book, from February 1747 to the end of the year 1749, there is scarcely one single instance of an entry of a company of two or more in the police-book, which has not a corresponding account in the household-book. I have examined them all with care; and the only exceptions seem to be that of *Cliquinet* and *Mepinet*, No. 228.; and the one in controversy; even the example
of

of *Cliquist* and *Mspinot*, may, with appearance of reason, be disputed. At the same time, during the period from February 1747 to the end of the year 1749, there are at least forty-six examples of companies marked in the police-book.

This, of itself, affords a very strong presumption, that the article, “*Mr——font en-tres, 4me Juillet 1748,*” has a corresponding article in the police-book; and, if it has, then the cause is determined.

I do not enter into the question, as to *single* persons said to be entered in the police-book, without a corresponding article in the household-book; because a single person may be more easily omitted than a company. As to those single persons, I think, that the pursuers have made the examples too few, the defender, too numerous.

It is not sufficient to say, that this article of Godefroy's book would not be probative in a question for half a crown. Moral evidence is not to be regulated by the statute 1681.

Next, that there were produced a letter from Godefroy to Mr Maillefer, acknowledging his letter of recommendation of a Scots Colonel and two ladies, and mentioning, that they

they had been actually in his house, and did not leave it till after the 10th of July; such letter, though not dated, and though not all written with Godefroy's own hand, would go very far indeed to terminate this great controversy; and yet it might not be probative in a question for half a crown.

HITHERTO, I have considered the question as to Godefroy's books, as if Godefroy were dead, or no witness in this cause. But, when Godefroy's deposition is considered, the evidence becomes more cogent.

I have shewn, that the articles continued down from the 4th to the 13th July 1748, do naturally and probably apply to Sir John Stewart.

Godefroy swears, that *they do apply*; and, if I am well founded in my premises, he swears nothing but what is *natural and probable*.

By parity of reason, had Godefroy sworn, that those articles did not apply to Sir John Stewart. he would have sworn what was neither *natural* nor *probable*.

His deposition implies, that the article, 4th July, continued on the right, relates to the person, who on the opposite side of the
book

book is designed Mr Stewart, and marked as entering by himself, 8th August 1748.

That, of itself, might be held a sufficient name for Godefroy's remembering *who* they were that resided in his house for above eight days in July 1748.

It is difficult always to assign the causes which originally fixed a fact in the memory of any man.

Godefroy may have had many causes for remembering Sir John Stewart and his company, and for remembering the connection between them and the written evidence.

A person recommended to him by repeated letters from a man of distinction at Rheims; a Briton coming with his family to Paris before peace was declared; a Briton coming with letters; the same person returning to his house within the space of a month: All these circumstances may have concurred in fixing the idea of Sir John Stewart upon Godefroy's memory.

There are many things which impress an idea upon the memory; and that idea will remain after the cause of the idea is effaced.

I could not by myself have suggested another cause why Godefroy may have had the remembrance of Sir John Stewart and his company

impressed

impressed on his mind. He contends, that, on the 4th July 1748, there were in Godefroy's but two lodgers, Mr *Refette* and Mr *Descourbons*, besides the nameless company, and Sir John Stewart's company. Now supposing, that the two persons first mentioned and Sir John's company were the only lodgers in the house, the memory of that company would be more lively in the mind of Godefroy, than if he had been in a hurry of business with his house quite full of guests.

IF it was Godefroy's general and almost universal custom, to fill up the names of his guests in his household-book, the very omission of that circumstance might aid his memory to the blank article.

THE circumstance of there being few single lodgers in his house, and no other *company* at all besides Sir John and his family, made it of less moment whether the account was filled up or left blank.

HAD there been another company in the house entering at the same time, and consisting of the same number of persons, this circumstance alone would have made it the more necessary to distinguish, by some name or appellation, between the one company and the other.

MANY

MANY other *causes of knowledge* might be suggested. The only one I shall add, is derived from the language, manners, and address of Sir John Stewart.

OF this the proof in the present cause affords more than one example: He is remembered by one of the passengers in the stage-coach to Paris for a point of honour dispute about seats, and for saying *mon place*, instead of *ma place*. Madame Pelletier, though, as the defender observes, she was then very young, and probably did not attend the coffee-house; yet she remembers Sir John Stewart, and describes him with sufficient exactness. The mention which she makes of Sir John residing in the *Rue St Martin*, points out the time better than she herself could do from memory.

AFTER all this, why are we to suppose, that Godefroy is a perjured man, and unworthy of credit?

It has been said, that people who eat in their own chamber paid more than in the ordinary; and that, as Sir John and his company eat in their own chamber, the blank article stated at the ordinary prices, cannot relate to them.

But this argument proceeds upon a mistake on the fact. Madame Godefroy says,
"That

“That at the same time, the persons who
 “chose to eat in their own apartments it
 “they were not satisfied with the ordinary,
 “gave notice thereof; but that generally
 “they were all satisfied with it; and *that*
 “*the price of the ordinary was the same, whe-*
 “*ther people eat in their own apartments or at the*
 “*table d’hôte.*” If Madame Godefroy is to
 be credited in any thing, it is in a circumstance
 of this kind; and there is nothing in the proof
 which contradicts her.

It has also been said, that it is incredible
 that Sir John would have remained at Gode-
 froy’s on the 10th of July, and yet have fix-
 ed upon that day as the æra of the delivery;
 for that the danger of a discovery, by means
 of the people at Rheims, was evident.

BUT it does not appear, that the people
 with whom Sir John and Lady Jane became
 acquainted at their return to Rheims, ever
 knew of the day fixed for the delivery of the
 twins. Mr Andrieux and his family may
 have heard it; but then, What could have
 induced them to have traced out Sir John,
 or to have inquired where he lodged upon
 the 10th of July?

AFTER all that has been said for proving
 that Sir John Stewart and Lady Jane were at
 Godefroy’s

Godefroy's upon the 10th of July 1748, I admit, that these circumstances would be of little moment, were there better and more convincing evidence, that, after a stay of two or three days, Sir John removed from Godefroy's, and was at another house upon the 10th of July : And this leads me to inquire what proof there is of his residence at the house of a Madame le Brun, to which house it is asserted, that he removed about the 7th of July.

ALL the laborious searches in the capitation-rolls for a Madame le Brun have proved unsuccessful ; no discovery has been made of such a Madame le Brun as might answer to the description given by Sir John.

THERE is no evidence of a person having eluded the capitation who was possessed of lodgings capable of accommodating herself, her daughter grown up to woman's estate, and, at least, one servant maid, together with a female lodger and *three* strangers, who, at that time, must be supposed necessarily, to have required three beds. It is plain, that there must have been five beds in this house, although one of the family had slept with the female lodger.

NONE of the *five* Madames le Bruns, mentioned in the proof, can possibly connect with the description given of the supposed person in controversy.

Not Mademoiselle le Brun, *Rue de Bievre*; because she lived single, and in a fourth story. Not Mademoiselle le Brun, *Rue du Murier*; because she also lived single, and in a fourth story. Not Madame le Brun, *Rue des Amandes*: because she and her daughter had a *single* room in a third story. Not Madame le Brun, *Rue Dominique*; because her residence is absolutely inconsistent with the description of a street on the left hand of the *Rue de la Comedie*, as one goes from the Pont Neuf to Luxembourg.

LAST of all, Madame le Brun, *Rue de la Comedie*, although she is represented as the person whose description bears the nearest resemblance to Sir John's Le Brun; for that the *Rue de la Comedie*, can never be said to be on the left hand of the *Rue de la Comedie*; and Sir John would never have made an excuse for not remembering the streets to the left of the *Rue de la Comedie*, by reason of their number, if he had meant to place the house in question, not in one of those streets, but in the *Rue de la Comedie* itself: Besides, this Madame le Brun

was

was a single woman: There is no appearance of her daughter or servant on the caption-roll; and she must have been of the very meanest rank, for she is taxed at three livres, while the apprentice to a dealer in earthen-ware is taxed at four livres.

But, indeed, I much doubt of the propriety of all this search in the caption-roll. I still think that the Madame le Brun in question must be sought for among those who keep either *hotel garni*, or *chambre garnie*.

The accounts given by Sir John and Mr. Hewitt are inconsistent with the supposition of Madame le Brun being a *gardi-maison*, or a woman keeping a *dépot* for an *apothecary*. If so, then she must have been, if she existed, a person who kept a shop, and not a person who kept a house.

If she were dead, there is no record of Sir John's warrant in the *Journal*, or in the most remote list of the *Journal*, calling a *gardi-maison*, or keeper of a house.

The last thing which I have to mention, in relation to the *Journal*, is the description in the *Journal* of the *gardi-maison* from the caption-roll, and the *gardi-maison* from the *Journal*.

2. SIR JOHN thinks that *his* Madame le Brun was recommended to him by Godefroy's people. This shows that he never thought of the hypothesis of Madame le Brun being recommended by a man-midwife as a *garde malade*, or keeper of a *dépot*.

3. THERE is nothing in the whole proof, which even seems to insinuate, that lodgers are ever received into the house of a *garde malade*, or of one keeping a *dépot*; and yet here, we have Sir John, Lady Jane, and Mrs Hewit, all supposed to occupy separate beds; and also a woman-lodger.

4. THERE is nothing in the whole proof, which even seems to insinuate, that a woman of Lady Jane's fashion, and not obliged to lie in clandestinely, did ever think of being delivered in such a place; in the asylum of loose women, or in a receptacle for the very meanest of the people, for a Mignon, not a Lady Jane Douglas.

It is material to observe, that, during the lifetime of Sir John Stewart, this idea of a *garde malade*, or a keeper of a *dépot*, was never adopted. This is a circumstance which merits particular attention. The information for the defender of July 1763, was certainly drawn up from materials furnished by

Sir

Sir John Stewart; it would be injurious to suppose, that the defender's counsel would draw up an answer to the *condescendence*, without taking Sir John's assistance, as to facts whereof he was the fittest person to instruct them. Had they answered the condescendence, without taking Sir John's assistance, they would have misled the pursuers, and perjured themselves in the proof. They have too much candor for the one, and too much judgment for the other.

Thus standing the case, it will be fit to read a paragraph or two from that information, p. 22. "To the condescendence, as to Madame Le Brun not being in the police-book, it is answered, That there is no reason to think that the books or registers at Paris are more exactly kept, or that the officers entrusted with them are more accurate, than those of the same kind kept in Britain; and therefore these books referred to in Paris, can have very little influence or weight in a determination of this kind."

Now, had Madame Le Brun been supposed not to have kept an *appartement*, or chamber, there would have been the time to have said so, and to have made the distinction between an *appartement* and a *chambre*; and the

defender

defender would have properly urged, that the non-existence in the register, of a Madame le Brun in 1743, keeping an *hotel garni*, or *chambres garnies*, was a circumstance extraneous to the cause, and absolutely immaterial; for that the Madame le Brun in question kept no such *hotel garni*, or *chambres garnies*, but kept a *dépot*.

It is now said, that Sir John Stewart did not know the difference between an *hotel garni* and a *dépot*. I shall make that supposition, although it implies that Sir John Stewart did not know the difference between such a lodging-house as he would take his wife to at the eve of her delivery, and the wretched habitation of strumpets and beggars. But then, what will be said of the following paragraph in the defender's information, 1st July 1763? "As for a keeper to Lady Jane, their finances would not admit of any extraordinary expence; *nor was a keeper necessary*, as "Mrs Hewit was attending her."

If Lady Jane actually lay in at the house of a woman keeping a *dépot*, or of a woman whose profession was that of a *grande malade*, is it possible to imagine that neither Sir John Stewart, nor Mrs Hewit, would have informed the defender's counsel, that Lady Jane actually

obviously lay in at the house of a person, whose occupation was that of a sick nurse or keeper? Instead of searching for reasons why Lady Jane had no keeper, the defender would have told in his answers to the confederence, that Lady Jane *had* a keeper, and lived in the house of a *keeper*.

That the far position of a *député*, or the house of a *quadrantale*, was not entered into during the life of Sir John Steyne. Afterwards some opposition of this nature was required; for it came out upon proof, that if Madame le Tour had kept an *hôtel*, *à la mode de la garnie*, she must have been in the register of police; but that no such Madame le Tour appeared upon that register, and consequently that she did not exist.

As the co-existence of a *M. le Tour* and a *Madame le Tour* is a well-known truth, it is not possible that a party of proof should coincide with the suggestion of a delivery of a *député* or a *quadrantale* to a *garçon*, the latter of which, that Mr. Steyne had been, was not only a *garçon*, and her testimony, in the *procès-verbal*, of the *garçon*, as she was named in the *procès-verbal* of the *garçon*, and is intimate with her as the partner in the *garçon*.

THE proof of the non-existence of this essential person in the drama, is of exceeding moment: By like proofs of the non-existence of persons introduced into other dramas, great and daring frauds have been detected.

YOUR Lordships will remember the unparalleled effrontery of the person who termed himself George Psalmanazar. This man invented a description of the island of Formosa; drew up an account of its laws and institutions; made a grammar of its language, and persisted in his fable for many years.—One great means of his detection was the proof of the non-existence of father Rhodes the Jesuit, whom Psalmanazar reported to have been his conductor into Europe.

AN imposture more recent was detected by a proof of the non-existence of Count *Vincenzo della Torre*, the imaginary husband of the daughter of *Signor Constantini of Termò*. and it is remarkable, that, tho' the historian of Formosa did at length, with much contrition, acknowledge his imposture; yet that the other historian persisted in asserting the existence of Count *Vincenzo della Torre*, altho' there was compleat moral evidence that he had never existed, unless in the imagination of the pretender at *Macerata*.

HAVING

HAVING already detained your Lordships so long, I will but just touch upon the proof as to the two *enlevements*.

With respect to the *enlevement* of Mignon's child; many of the circumstances co-incide with the system of the pursuers, others disagree with it. The principal differences are in the description of the person who carried off the child, and in the colour of the child's eyes: And it is remarkable that those differences are mentioned by the witnesses to whose testimony the defender has chiefly objected, by the *parties* Mignons! Set their testimony aside, and the connection between what passed in the *Paroisse St Antoine*, and at the *Hotel D'Argen* * is wonderful.

The *enlevement* of Sanry's child does still more exactly resemble the history of Sholto: The witnesses to that *enlevement* are not liable to suspicion; they were first discovered and examined by the defender's agents: Had they varied upon oath, from what they declared at their first examination, the defender would have availed himself of that material circumstance. But it is not till that they have even varied; and indeed their evidence bears the marks of truth and candour. Although

I do not approve of the stile of the *Monitoire*, yet the witnesses of the Fauxbourg St Laurent could not be instructed by the *Monitoire*. On the contrary, the *Monitoire* was drawn up in consequence of the information previously received from those witnesses.

I have already detained your Lordships too long; and therefore I conclude as I began, that, with great unwillingness, I give my opinion for sustaining the reasons of reduction.

L O R D

LORD JUSTICE-CLERK.

IT is now my duty to deliver my opinion upon this very interesting cause, which, taken in all its circumstances, and in all its consequences, is the most important to the parties, and to the public, that ever came before this court.

With respect to the pursuers, I cannot take upon me to determine, at this time, what interest they, or any of them, may finally be found to have in the succession of the late Duke of Douglas: But this I know, that the title of Duke Hamilton to carry on the present action has been sustained in this and the higher court, and the title of the two other pursuers has never been called in question: And therefore I shall find myself obliged to give the same judgment in this suit, as I would have given if the like suit had been brought by a younger sister, or the son of a younger sister of Lady Jane Douglas.

With respect to the defender, the importance of the decision to him is too affecting to escape the observation and feeling of any judge. None of your Lordships have felt
more

more for his situation than I have done; and if I could dispose of my opinion, as I can of my charity, *unaccountably*; I know, and the world may guess, upon what side I would have given that opinion: But, sitting in this place, I am not master of my own opinion, it does not belong to me, it belongs to sacred justice, and I cannot with-hold it.

With respect to the public, the question is no less important. On the one hand, it is of the highest consequence, that the rights of filiation, upon which the peace of families, and all the important rights of mankind depend, may not be disturbed by a challenge of birth, unsupported by legal and convincing evidence: On the other hand, it is of no less consequence, that the same right of **filiation**, which includes all the rights which can descend to mankind through the blood of their remotest ancestors, be not evaded, and rendered ineffectual by artifice and base imposture. I am sorry to give my opinion, that one instance occurs of this in the present case. For, after the fullest consideration of the whole evidence, I am clearly of opinion, that this defender was not born of the body of Lady Jane Douglas; that he is a supposititious child,
and

and that the pursuers have sufficiently proved their reasons of reduction.

BEFORE I proceed to state the grounds of my opinion, I must beg leave shortly to state the rules of law, and of evidence, which appear to me to apply to this case: In doing which, I shall endeavour to obviate some observations which have been stated from the bench, in support of a different opinion in this cause.

AND the *first* thing that occurs, is the question, *cui in iuribus onus probandi?* This appears to be a dispute about words; for the counsel of both sides, and all your Lordships seem to come to the same conclusion. The defender is in possession of his filiation, by the acknowledgement of his reputed parents. That state is ascertained to him, *in prima instantia* by the service of the jury. That service has been followed by legal titles to the estate, and by the decree of the court ordering him to be put in possession. Such title cannot be shaken, but by a reduction founded upon evidence sufficient to overturn the service. But every lawyer knows, and must admit, that of all the titles known in the law, that of a *foetus* is the weakest, and most insignificant. It is an act of volunt-

tary

tary jurisdiction, may proceed before any judge, and before a jury of the claimant's own chusing. It is not a pleadable brieve; and the depositions of two witnesses to the propinquity by reputation, is held to be sufficient to found the verdict. But still it is a good title to the succession, till it is set aside by reduction; and accordingly, the parties have proceeded in this cause. And now, the matter comes before your Lordships, as the grand jury, to consider upon whose side the evidence lies. If the pursuers have, upon the whole matter, proved sufficient to satisfy your minds and consciences, that this is a false service, then you must reduce it. If not, you must leave the defender in the possession of his state and filiation, as proved by his service, and assoilzie him from this reduction.

2dly, ALL crimes, and all frauds, whether pursued criminally, or *ad civilem effectum*, admit of a twofold proof, either *direct* or *circumstantial*. Crimes of a latent nature, contrived of forethought, especially when pursued at a distance of time, seldom admit of a *direct* proof. In the present case, the proof is *circumstantial*.

3dly.

3^{dly}, In such an evidence, each circumstance must be proved to the satisfaction of the judge or jury, before it can be taken into the general chain of evidence.

4^{thly}, In trying the import of such circumstantial evidence, you are not to separate the evidence, and try the import of each circumstance by itself; you are to take the whole evidence together, in order to form a proper verdict or conclusion. And it is agreed by all judges and lawyers, that a circumstantial evidence may lead to as certain a conclusion as a direct proof; in many cases more certain: And the safety of the public depends upon this principle.

5^{thly}, In a circumstantial evidence, no part of the proof is so much to be regarded, no part of it can give so much conviction to the mind, as what arises from the conduct and behaviour of the parties accused. Providence may collect a chain of circumstances together, in such a manner, as to create an appearance, and sometimes a conviction of guilt against an innocent person. But, I believe, scarce an instance can be given, where the principal part of the evidence from which the guilt is inferred, does arise from the conduct and behaviour of an innocent person.

6thly, *Demonstration* and *demonstrative* evidence is not incident to human affairs, and is not necessary in the trial of any case, civil or criminal. Demonstration implies an impossibility of the contrary. Such proof can occur in no case. The most important facts, whether in civil or criminal matters, must be tried by moral and legal evidence; and that is legal evidence, which gives full faith and conviction to the mind of the judge or jury. Such was the opinion of all my brethren of the court of Justiciary, in the late trial of John Reid for sheep-stealing *.

IT

* THE case here referred to was as follows. John Reid was indicted for stealing six score of sheep, from a farm in the county of Peebles. It was proved, that the prisoner was a person in low circumstances, and of bad character; and that soon after the theft, he was seen driving the sheep upon the road leading from the farm from whence they were stolen, towards Glasgow. He was traced to the neighbourhood of Glasgow, where he placed the sheep in an inclosure, and treated with sundry butchers for the sale of them. But, before finishing any bargain, a surmise arose, that the sheep were stolen; upon which the prisoner abandoned them, and fled the country; but was afterwards apprehended. Upon his trial, he offered no evidence whatever, that he had come by the sheep in any lawful way; and yet, the jury, misled by the idea, that there could be no legal proof

It was said, "That if we admitted any evidence, short of demonstrative evidence, to take away the filiation of the defender, established as it is, in this case, it would be a fatal decision to the public, and to our posterity."

I am not moved by this alarm; for what is the right of filiation? It is not merely the right of being called the son, and of inheriting the succession, of our immediate parents. It implies also the right of inheritance thro' their blood to all their ancestors. Let us now see how far posterity and the public is interested in the decision. We find that filiation cannot be taken away without demonstrative evidence of the imposture: But we find, at the same time, that that filiation, and the most important rights arising from it, may be disappointed and robbed from us by any person who can conduct an imposture, so as to avoid demonstration of the guilt. No

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lawyer

proof of his guilt, because there was a possibility, that a knight have got the sheep in a lawful way, though he had entered no proof of it, returned a special verdict, from which no guilt could be inferred; and therefore, he was dismissed from the bar. But the five judges present, delivered their opinion *per curiam*, that the verdict was erroneous, and contrary to evidence.

lawyer has said, that the *crimen suppositi partus* is to be tried by a different rule of evidence from any other crime. I am for giving the defender the full benefit of every rule of law with regard to evidence, of every exception known in the law for setting aside evidence : But I am not for inventing a new system of law, and new rules of evidence, for securing his filiation different from what the public and every individual enjoys for their security against the crimes of treason, murder, forgery, and falsehood of every kind.

It was said, “That a direct proof by two
 “ or more credible witnesses cannot be redar-
 “ gued by a circumstantial evidence, which
 “ may be consistent with the positive proof;
 “ and the case of theft was referred to, where
 “ the stolen goods may be found in posses-
 “ sion of the accused person, and a variety of
 “ other circumstances concur to fix the guilt
 “ upon him; and yet, if he shall prove by
 “ two or more credible witnesses that he
 “ bought the goods from a third person, all
 “ these circumstances must fly off, and give
 “ way to the direct proof of innocence.”

This proposition is solid in law; and such of the judges as think, that Sir John Stewart and Mrs Hewit, the only witnesses to the ac-
 actual

tual delivery, are credible witnesses, and that the circumstances proved by the pursuers are consistent with their evidence, or not sufficient to destroy it, may adopt that ground for their opinion: But I, and the other judges who have the misfortune to differ upon both these points, cannot possibly be moved by this argument.

It was admitted, "That the mere acknowledgement of parents was not sufficient to establish filiation: But it was said, That, in this case, the acknowledgement of the parents is supported by universal habit and repute of the country where the birth happened."

But what weight can any judge lay upon *habit and repute* in this case, when it must be admitted, that the same habit and repute must necessarily have attended the defender, if he had been a supposititious child. No vestige of the house of the supposed delivery, or of Madame le Brun, or any of her family. His first appearance is at the house of Michel amongst strangers, who could have no reason to doubt that he was the child of the persons who brought him thither and marked him as their own child. When carried to Deceuntings, and afterwards to Rhins, and

there baptized as the son of Lady Jane Douglas, of whom she had been delivered at Paris, Who, in that place, could entertain the least doubt of the parentage that was ascribed to him? Such habit and repute could not arise from any knowledge of the circumstances of the birth: It rests entirely upon the assertion of the supposed parents, and must stand or fall by the truth of that assertion.

“WE have heard of the extent of the British empire, and of the dangerous consequences which must ensue, if a proof is required of the actual delivery: And it was said, That even of those born at home, not one of a thousand can prove their actual birth at a distant time.”

THIS alarming argument proceeds upon a false hypothesis; for it supposes that a child born at home or abroad, acknowledged by its parents, and habit and repute to be their child, by those who had best access to know, must also, in support of such filiation, prove his actual birth. But no proposition can be more false in law. The child in possession of such filiation needs no evidence to support his reputed birth; and he who brings the challenge must bring evidence sufficient to disprove it.

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The pregnancy, delivery, and reconvalence of a woman, do not consist *in puncto*. They carry with them a train of circumstances which makes it impossible to disprove a true birth; and no instance has occurred where it happened.

“We have heard a load of imputation thrown upon the pursuers for delaying their action; whereas it was said, the defender could bring no such action to declare his birth.”

This circumstance of the delay would have had more weight, if the challenge now brought had come on a surprise and unexpectedly: But the evidence is full, and public notoriety puts it beyond all doubt, that the suspicions of imposture were coeval with the defender's birth. His parents, if conscious of the truth of his birth, had it in their power to prevent the possibility of such a challenge. During the life of the Duke of Douglas, these pursuers had no interest to bring such challenge. I doubt if such action would then have been sustained at their instance. But there can be no doubt, that a declarator for establishing the proof of the birth of the defender would have been sustained at the instance of his parents. I impute nothing to them for not taking this measure:

measure; but I cannot see that any imputation can lie against the pursuers for not bringing their action before they had an interest to challenge the birth: And I firmly believe, that the defender has suffered nothing in point of evidence by the delay.

“WE have also heard great weight laid upon
 “ the illegality of the Tournelle process; and
 “ it was said, that the witnesses examined under the authority of that court, were so far
 “ from being *omni exceptione majores*, that they
 “ were *omni reputatione minores*; and that no
 “ more credit ought to be given to their evidence than to a slave deposing under the
 “ terror of his master’s scourge.”

BUT whatever your Lordships opinion may have been of the propriety of that action before the parliament of Paris; and however much attached to the laws and constitution of your own country, you cannot entertain an opinion so derogatory to the honour and course of proceedings before that very respectable court, as this parallel would suggest.

WHAT are the grounds upon which this prejudice is taken against the evidence of these witnesses? 1st, That they were examined in presence of the judge only, after reading the *plainte* over to them; and interrogating them
 upon

upon the subject-matter therein contained: And, *2dly*, By being thus examined upon oath before that judge, they were thereby prejudicated and tied down in their second examination, under your Lordships authority, to swear agreeable to their first depositions, whether true or false.

As to the *first*. If any exception could be taken to the form of examining these witnesses before the Tournelle, surely this cannot apply to their examination taken upon your Lordships commission, according to your own forms, and in presence of both parties: And it is this last examination only which is in evidence before you.

As to the *second*. It has not been explained upon what principle of law or common sense it is founded: Because a witness has been examined in one court, where the action could not proceed, Is there any reason why he may not be examined before a more competent court upon the same facts? Does not this happen every day in both parts of the united Kingdom, with out any imputation to the credibility of the witness?

If the witnesses examined in the Tournelle had been picked up from the streets of Paris, and brought before that court to swear to facts,

facts, of which there was no evidence that they had any knowledge, except from their own oaths, there might be some ground for this challenge? But who are the witnesses to whose evidence this exception is taken? Are they not the very persons whom Lady Jane Douglas confessedly made choice of as her confidants and attendants, and to whom she committed herself, as the sole witnesses of her conduct during her stay at Paris?

ONE of your Lordships number took the liberty of repeating what he heard said in the House of Lords upon occasion of the last appeal; and from thence prophesied, that the Tournelle evidence would be totally disregarded in that court.

BUT, if any thing strong was said upon that occasion, Was it not owing to the shameful invective which was there thrown out against the conduct of Mr Andrew Stuart, during the course of the inquiry at Paris; and to the bold charge then made of a falsification in the book of Michell, after they were exhibited by him, and lodged in the Tournelle by order of that court? No wonder that deep prejudices were conceived from such an attack: But has not the same learned judge with great honour to himself, now disclaimed the grounds of that attack,

and

and certified, from his own proper knowledge, the purity and integrity of the whole of Mr Stuart's conduct in this cause from first to last.

AFTER joining my own highest testimony to the honour and integrity of that gentleman's character, I will only add, that it has undergone a scrutiny upon this occasion, which nothing but the most upright and delicate conduct could have withstood, by a public exhibition, not only of the journal of all his transactions at Paris, but of the most private and confidential thoughts and observations which occurred to him and his assistants in the conduct of their clients cause.

AND, therefore, without presuming to repeat what I heard in the House of Peers, I will likewise hazard a prophecy, That if the opinion of any of your Lordships shall proceed upon a total rejection of the Four witnesses, that opinion will not be supported, but will be found inconsistent with the last judgment of that most Honourable House, which, for the sake of justice, and a fair trial, relaxed the strictness which your Lordships had imposed upon the purifiers by your Interlocution, and opened a method for facilitating the examination of these witnesses under the authority of your Lordships commission.

I shall now proceed to state my opinion upon the different heads of the proof, referring to the evidence, which all your Lordships are possessed of, and which has been so fully stated by the judges who have spoken before me.

And, *first*, As to the character of Lady Jane Douglas, I agree in opinion with the learned judge who spoke last, that there is the strongest evidence before us of the falsehood and duplicity of her character. Her letter to Mrs Carle, her bosom-friend, upon the subject of her marriage to Sir John Stewart; her conversation with Lady Katharine Wemyss upon the same subject; the falsehood and imposition of her letter of the 7th of August 1748 to her brother, clearly implying, That she was then at Rheims, and had been delivered at that place; her after letters from Rheims to Lady Mary Hamilton, Mr Haldane, and her other intimate friends, all calculated to impose that belief; and, above all, her being art and part in the forgery of La Marie's letters, and preserving them with so much care for the purpose of creating false evidence of the defender's birth: All these things satisfy me, that this Lady was capable of the falsehood and imposture, which is now the subject of trial.

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That same thing I say of the character of Sir John Stewart, who stands now convicted, not only of the forgery of these letters, but of the grossest falsehoods in his judicial examinations before your Lordships.

As for Mrs Hewitt, the only other person privy to the supposed delivery; no attempt has been made to justify her from the grossest perjury in many particulars of her evidence; and therefore I consider her as very capable of being an accomplice in this imposture.

As to the question, *cui bono*, or from what motives can Lady Jane be supposed to have contrived and executed this imposture?

It is difficult to dive into the motives of the human heart in the commission of crimes: But the proof presents several motives which might elude the mind of this Lady; her desperate circumstances; the bad terms she stood on with her brother; her despair of recovering his favour and support, without this remarkable change in her situation; resentment against the possessor of the family of Hamilton, to whom she ascribed the loss of her brother's fortune, and injury to his reputation. But, above all, the clear opinion which she entertained of the indefeasible right to the succession, and estate of Angus as secured

red to her, and her issue, failing the issue of her brother, of which there was no prospect. All, or some of these motives, might operate upon the mind of such a woman, and greatly palliate the guilt of a fictitious delivery: For I cannot suppose that Lady Jane was so depraved as to have been guilty of this crime, if she had the same sentiments of it that all your Lordships must necessarily have.

As to Lady Jane's age, I admit she was not past the possibility of issue; but she was in the 50th year of her age, past the period of issue, according to the ordinary course of nature. I cannot therefore agree with one of my brethren, who said that her pregnancy was as credible as if she had been but 25 years of age. For, if the calculation were made, I believe, of women of this island, not one of 20,000 have issue at the age of 50. This is at least a circumstance of improbability against the defender; at any rate, it would have rendered Lady Jane more timorous, more communicative to persons of experience, more anxious to have the best assistance, and to be well attended at the critical period of her delivery. How far this was the case, will appear to your Lordships from the whole of the evidence.

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As to the proof of the pregnancy, upon which the defender seems to lay the greatest weight, every body knows the uncertainty of the appearances of pregnancy; and that, in every instance of a fictitious delivery, appearances of pregnancy have been, and must necessarily be assumed. It is the delivery alone which can ascertain, whether these appearances are real or assumed; it is not the appearance of pregnancy which we are now to try, it is the actual delivery of Lady Jane Douglas, at Paris, of this defender: And if, upon considering the whole evidence for and against that delivery, I shall find any opening in my mind to a belief that there might have been a delivery at Paris, I shall hold the previous appearances of pregnancy to have been real; but if, on the contrary, I shall feel, from the whole evidence, a full conviction, that there was no delivery at Paris, I will then hold these appearances as only assumed, in order to pave the way for the fictitious birth.

At the same time, in passing, I must say, that the evidence of the pregnancy is not such as I would have expected in a real case. I cannot account for Lady Jane's positive denial of her marriage to Lady Katherine Wemyss, if she was then truly in the fifth month

month of her pregnancy. I do not like the unnecessary and unusual coverings of her body for some months before her departure from Aix-la-Chappelle. I give no credit to the exaggerated description of her belly and breasts given by Mrs Hewit and Tibby Walker. If this last witness could have had any credit with me upon her former depositions, that is totally obliterated by her late examination before your Lordships. The only credible witness who deposes to the size of Lady Jane's breasts, is Mrs Hepburn. She appears to have had but an accidental and transient view; and under the prepossession of Lady Jane's pregnancy, I can easily conceive, that a woman, without experience, might have been deceived in that appearance. Madame Negrette, a lady of experience, and the confidant of Lady Jane, could perceive no symptoms of pregnancy, till Mrs Hewit assured her of it; and falsely told her, that she had had a miscarriage in Holland. And she deposes, that, in the end of March, *her breasts were hollozer than ordinary*, which she ascribes to a supposal, that this was the beginning of her pregnancy, though she was then near her sixth month.

I will not follow the history of Lady Jane's travels through the low countries. I will take her up at Rheims, where she arrived near the last month of her pregnancy, and where it is said she intended to lie in. Advanced in age, pregnant with her first child, lately threatened with a premature birth, so big, that twins were prognosticated by Mrs Hewie, it was natural for her to show some anxiety about her delivery, and above all things, to have sought out the most skilful midwife or accoucheur in the place, and to have bespoke a nurse. To none of these things does she attend; and after staying a whole month at Rheims doing nothing, she takes the sudden resolution of going to Paris, when within a few days of the delivery.

Every thing was disadvantageous to this journey; and the defender's counsel are sensible, that they must give some account on to sudden and unseasonable a change of her first resolution. The account given is, the want of proper assistance for delivery at Rheims. But I am not to say, that she was surprised or deceived, and that the delivery being to be performed within a few days of her arrival, she had not time to send for what she wanted, or to consult of

skilful midwives and accoucheurs were to be had at Rheims; and the story of Madame Andrieux being unskilfully brought to bed, is contradicted by the best evidence that can now be had.

HAVING taken this strange resolution of leaving Rheims, and going to Paris to be delivered, it is natural to expect, that she would have given notice thereof to some of her friends; that she would have carried her maid-servants with her; that she would have got proper recommendations from Rheims, for the necessary assistance she wanted at Paris. But how different was her conduct in all these respects? No letters wrote to her friends; no letters taken from Rheims to direct her to proper assistance. The only letter carried from Rheims, was one from Mr Maillefer, from whom Lady Jane's situation was kept a secret, and who recommends them to Mr Godefroy, under the character of a Scots Colonel, with two ladies, who had gone to Paris for a short time, and were to make some purchases.

BUT above all, Lady Jane's leaving her two maids at Rheims, is most unaccountable. All the lawyers who treat of this crime, mention such a circumstance as this, as one of the

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the strongest, and most usually attending this species of imposture. Sir John Stewart and Mrs Hewit are sensible of the force it, and endeavour to account for this part of Lady Jane's conduct, by the want of money to carry these servants to Paris. The account is absurd; because less than one pound Sterling would have carried them to Paris, where they could have lived in family with Lady Jane at less expence than they did at Rheims; and it is also false, because it is clearly proved, that Sir John had credit at Paris sufficient to answer all his expences.

It was said for the defender, "That he ought not to be obliged to account for every step of conduct of his parents, especially at such a distance of time; and that Lady Jane's marriage with Sir John Stewart was as unaccountable a step as any in her after conduct."

The general proposition may be true in matters of indifference, or in matters which admit of a variety of motives and conduct; but not in matters of the highest moment, and where reason, sense, and the common feelings of mankind must necessarily direct the conduct.

HERE then we have Lady Jane Douglas setting out for Paris at two o'clock in the morning in a common stage-coach, in order to have better assistance at Paris than she could have had at Rheims. Amongst her fellow-travellers in that carriage, are, a lady who had born many children, and a young lady of some rank, and well acquainted with Paris, whose acquaintance Lady Jane seemed fond to cultivate; and yet, during a long journey of three days, not one of the company observed her pregnancy, nor had she the least conversation with any of them touching her situation, or the object of her journey to Paris.

SHE next arrives at the Hotel of Godefroy, one of the best in Paris for one in her situation, in respect of the character of Mr Godefroy, and of his wife, who had born many children. There they confessedly stay for some days; but nobody in that family observed the least appearance of pregnancy: No discovery was made of Lady Jane's situation by herself or any of her company: No mention of an accoucheur, of a nurse, or of proper lodgings for her delivery. What is the excuse for this unaccountable conduct? Sir John had bespoke Pierre la Marre; and he was to take care of every

every thing. If it had been so, Why not speak of her situation to Madame Godefroy? Or how could Lady Jane's situation, at the point of delivery, escape Madame Godefroy's observation for so many days? But why did not the accoucheur appear? It was the sole object of the journey to find a good one; and, inasmuch as he was engaged, it was natural for Lady Jane to desire to see him, and to make him acquainted with her situation; yet no such person ever appeared during their stay at the house of Godefroy.

Her next removal, as it is said, was to the house of M^r de la Roche on the 7th or 8th of July, where she was delivered on the 14th, and died till the 18th or 19th. If this had been true, Sir John Stewart, who knew Paris so perfectly well, could have had no difficulty in describing and finding out the route where he had resided for ten or twelve days, and where his lady had been delivered of twin-children. Such an event happening in my lodging-house to strangers, who could have no plot to conceal it, removed necessarily to be crowded with it, a train of circumstances sufficient to lead to the discovery of the fact; and yet, even the most diligent inquiry by both parties, assisted with every resource

resource which the police of Paris could afford, no vestige or discovery has been made of any such house or family as that of Madame le Brun. The circumstance of Sir John's first account of the place of delivery, in his memorandum to Mrs Napier, is not immaterial. He said, it was the house of Madame Michell; and Mrs Hewit's letter to the Duke of Douglas, assigning the same place for the delivery, carries a strong appearance, that they had not then invented the fictitious house of Le Brun.

BUT to proceed with the defender's account of the matter: Here they are at Le Brun's on the 7th or 8th of July, and on the 10th of that month Lady Jane is delivered of twins.

UNFORTUNATELY for the defender, no less than four letters from Sir John Stewart, of that date, are extant, and not a word in any of them of Lady Jane's delivery. But this is not all; for it is proved, that Mrs Hewit wrote a letter to the maids at Rheims, bearing date the 11th of July, and no mention is made of the delivery. This must be absolutely fatal to the defender, if not taken off: And how is it taken off? By Mrs Hewit's
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after correction of that date, in her subsequent letter to the maids of the 22d of that month. Now, is it possible to suppose, that Mrs Hewit, a weak inaccurate woman, would have thought of such a correction? Two things must be here supposed, *1st*, That she misdated her letter of the 11th; and, *2^{dly}*, That, at the distance of eleven days, she recollected that mistake, and thought it material to correct it in her letter of the 22d. If nothing wrong was going on, there was no occasion for such anxiety in recollecting and correcting the date of her first letter.

THE like correction of the date of Sir John's letter to the Earl of Crawford, written upon the 10th of July, fills under and strengthens this observation: Both show that there was no delivery upon the 10th; and that the after correction of the dates of these letters, at the distance of eleven days, took its rise from after circumstances, which obliged them to fix the delivery upon the 10th of July.

BUT farther, What account can possibly be given of the profound silence with regard to Lady Jane's delivery, from the 11th to the 21st and 22d of July? For the first letters, giving account of this important event to their friends and correspondents, are of these dates.

Two

Two reasons are assigned to account for this extraordinary conduct; *1st*, The hurry that Sir John and Mrs Hewit were in for the first eleven days after Lady Jane's delivery: And, *2^{dly}*, Because Lady Jane behoved to write to her brother before any other person was informed of her delivery.

BOTH these accounts are equally absurd and false. No supposable hurry can account for this silence for eleven days. From her own account, Lady Jane had a surprising recovery: And Mrs Hewit's own evidence clearly proves, that there was no such hurry as could have prevented her or Sir John from communicating the joyful news to their friends for eleven days: And the second reason is disproved by the letters produced, wrote by Mrs Hewit and Sir John before the 7th of August, when Lady Jane first communicated her delivery to the Duke of Douglas from Danmartin.

ANOTHER unaccountable circumstance in their conduct, is the false dating of all their letters written from Paris, and Lady Jane's letter to her brother of the 7th of August as from Rheims. One or two letters might be dated from a wrong place by mistake; but the false dating of so many letters could not be without design: And it is very remarkable, that

this design of imposing upon their friends as to the place of delivery, is followed out in a number of letters written by Lady Jane to her friends in Scotland, after her return to Rheims, in none of which is there the least mention of her having been at Paris; but, on the contrary, they are all calculated to impose a belief, that she was delivered at Rheims.

THE only answer attempted to be made to this observation, was, that neither Sir John nor Lady Jane, in any of their letters, have said, that she was delivered at Rheims: So much the worse, as it shows their deceit and artifice in imposing upon their friends: But besides, let any candid person read Sir John's letter to the Earl of Crawford, dated *Rheims, July 27.* and Lady Jane's letter to her brother, dated *Rheims on Monday, 15th Aug. 1748*, and they will there see the delivery fixed by Sir John and Lady Jane to have been at Rheims, with as much clearness and certainty, as if they had asserted it *ad idem verbum*. The import of all this evidence, arising from so many letters wrote by Sir John, Lady Jane, and Mrs Hewit, during the period of Lady Jane's supposed illness and convalescence, carry the strongest marks of falsehood and imposture, and have great weight in my opinion.

BUT the most striking and direct proof of the imposture arises from the books of Godefroy, supported by the evidence of Mr and Madame Godefroy. This branch of the argument has been fully exhausted by the learned judge who spoke immediately before me. I will therefore content myself with declaring my opinion that these books, supported by the depositions of Mr and Madame Godefroy, (against whose evidence I see no good objection), have conveyed to my mind a full conviction, that Sir John, Lady Jane, and Mrs Hewit, arrived at Godefroy's upon the night of the 4th of July, and remained there till the 13th of July, without any appearance of a delivery; which is totally inconsistent with, and disproves the whole history of the defender's birth.

THE complaint, that so much stress should be laid on the books and evidence of an inn-keeper and his wife, has already been obviated. They are not witnesses picked up by the pursuers; they are the persons with whom Lady Jane confessedly lodged, and to whom alone she committed the evidence of her conduct during her stay there. If the defender could have produced the shadow of evidence of Madame le Brun's house and family, or
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of any other house where she could be supposed to have resided, and to have been delivered upon the 10th of July; some argument might from thence have been formed to have impeached the credit of Godefroy and his wife, and of their books: But when there is no vestige of any other place of residence to be set in opposition, I can see no ground in law or reason for denying my assent to the evidence arising from these books.

BOTH parties seem to agree that Lady Jane, Sir John, and Mrs Hewit, came to Michell's upon the 18th or 19th of July; and their conduct and transactions during their stay in this house are indeed remarkable, because they prove that Lady Jane was in a situation upon the 18th and subsequent days of July, as appear to me incompatible with her supposed delivery on the 10th of that month. The reason assigned for her coming to Michell's so early as the 18th, is, that she was forced to leave Le Brun's on account of bugs. It is scarce supposable that this nuisance would not have been discovered so as to make her change her lodgings before her delivery, or that that distress would have made Lady Jane, so lately delivered of twins, quit the house upon the 9th day after her delivery: But,

it is remarkable, that no such thing is mentioned in Mrs Hewit's letter to the maids of the 22d July; nor indeed is any mention made of Lady Jane's having changed her lodgings.

BUT what appears more remarkable is, the undeniable proof of Lady Jane's having gone out in a coach from Michell's with Sir John and Mrs Hewit, early in the morning of the day after her arrival, in order to bring home the defender, and of her continuing abroad the whole day, and returning in the evening with the defender, and such a nurse as she never could have intrusted her son with. No account is given why the defender was sent away from Le Brun's, the place of his supposed birth; and it is impossible to account for Lady Jane's being abroad a whole day so recently after her delivery, in order to bring Archibald to Michell's house; when it is admitted, that, during her whole stay at Paris, she did not make one visit to her younger son Sholto, who was removed from her the day after his birth, and was at nurse in the close neighbourhood of Paris.

Mrs Hewit, in her letter to Mr Harper, says, upon the word of a dying woman, that it was upon the sixth day after the delivery

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very that they removed to Michell's. If so, then it was upon the seventh day after her delivery, that Lady Jane was thus unnecessarily going abroad a whole day in quest of her son Ardenbald.

I will pass over the strange and contradictory accounts given by Sir John and Mrs Hewit of the different nuries. Nor will I lay much weight upon what Michell's family have deposed; that these strangers said they were going to bring their child from St Germain, where they understood the lady had been delivered; and that the child, when brought to Michell's, appeared to be three or four weeks old. But what appears most remarkable is, the indisputable proof of Sir John, Henry Jane, and Mrs Hewit, attended by Madame Blainville, having gone, within a few days after her arrival at Michell's, to Versailles, and there spent a whole day seeing the palace and gardens. Their second tour, a few days after, to see the squares and public places in Paris, is also indisputably proved by you and the Countess, and Mrs Hewit, who were all at Paris or Versailles at any one time, have positively denied before your lordship, that they made either of these excursions, or made the slightest observation; and that they were not in Paris at the time.

they durst not avow Lady Jane's making these unnecessary jaunts so recently after her delivery ; whilst, at the same time, they acknowledge, that, during her whole stay at Paris, she never once saw her weakly child Sholto. Put this in opposition to her tragical exclamation upon the death of Sholto, and what a figure does it make ? The thing is impossible, and nature and reason will not suffer me to believe it.

It is also proved by Michell's family, that, from the time of their coming there, Lady Jane slept with Mrs Hewit, and rose and went to bed with the rest of the family ; and, during their whole stay, no inquiry was made after them by Pier la Marre the supposed accoucheur, nor by any of Le Brun's family, where it is supposed Lady Jane was delivered.

THE counsel for the defender, by fixing the period of Lady Jane's convalescence in Michell's house, only show that they felt the necessity of proving some appearance of convalescence from a late delivery of twins by a lady past the 50th year of her age ; but it is not only not proved, but, in my humble apprehension, clearly disproved by the whole circumstances of her conduct during her stay in Michell's house.

I will here only add that unaccountable part of Lady Jane's conduct in not providing a nurse before her delivery. The notable reason assigned by Mrs Hewit, *because* she said she did not know if she would bear a *living child*, is too shocking to reason and the feelings of a mother to admit of any explanation which can render it in the least degree probable.

To all these circumstances of evidence may be added, their studied privacy and concealment at Paris. We see Lady Jane and Sir John fond of company in every other place where they resided. But here in Paris, upon the most important and joyful occasion, they remain sequestered in different houses, so as not only to be invisible, but unheard of, for near a whole month, by any of their acquaintance, or by any British subject: And indeed it is remarkable, that from the time of their leaving Rheims, and during their whole stay at Paris, no person has been found who saw Lady Jane in a state of pregnancy, or in the state of a lying-in-woman, or who heard of her being delivered in Paris: for, as to the oath of the person called *John Addick*, it must be given up as standing contradicted by the evidence of Sir John and

and Mrs Hewitt themselves; and it had been better, that such a witness had not been brought to examination.

HAVING consumed so much of your Lordships time, I will not enter upon the evidence of the *enlacements* of the children of Mignon and Sanry. It is fully stated in both the memorials; and the material parts of it have been spoke to by several of your Lordships. I will only say, that it is no small confirmation of the imposture to my mind, that there is such clear evidence of the carrying off two male children from their parents at Paris, attended with such circumstances in point of time, ages of the children, and description of the persons to whom they were delivered, as, in my humble opinion, do strongly apply to this case, and give me a conviction, that these were the children which Sir John Stewart and Lady Douglas have imposed upon the world as their own issue.

In stating the chain of this circumstantial evidence, it is impossible to overlook the unaccountable conduct of Sir John and Lady Lane, in abandoning themselves and their children for so many years, not only to the suspicions of the world, but to the disbelief of their nearest relations, of her being the
mother

ment of their children. It was an object of great importance to themselves, and to their children, to be overlooked or despised especially, when the means of confuting their objections were at hand, and could have been procured without expence or trouble. The answer applied to Lord Melbourn, and referred to as the sole excuse for this conduct, cannot be believed by any person who knew that gentleman. If it had been given, Lady Just and Lady Jane could have no motive to rely upon it, important of that importance, and which they had such easy access to the evidence and accordingly, we find them, in their letter to Madame Lewis, 14th February 1775, greatly irritated with the impudence of this imposture; “and resolved to discharge their dear children, to have the distractions of the beginning, & of Lady Jane’s pregnancy, and the progress even to her happy delivery, as undeniably proved as is possible.” But, instead of following this more rational plan, they content themselves with an examination of a few witnesses, and insist upon the appearance of the same boys, and those few there, without any regard to

tempt to bring certificates or evidence of any kind from Paris of the actual delivery.

WHEN to this unaccountable neglect of securing true evidence of the birth, is added the unjustifiable contrivance of forging false evidence to support the birth, the case becomes too strong for my mind to resist the conclusion. It is clearly proved and admitted, that the four letters of Pier la Marre, the pretended accoucheur, which were produced in the service, are all and each of them forged letters. Sir John has admitted, that he was the contriver of that forgery, and that he transmitted them to Lady Jane Douglas. They remained in her possession till her death, and were taken out of the trunk where her most valuable things were deposited, and produced, and printed, with the other evidence laid before the jury at the service. To overlook or disregard this attempt in the defender's supposed parents to support his birth, by the forgery of evidence, would strike at the foundations of all law and public security. What stronger evidence of falsehood and imposture, than a detection of evidence forged to support it, and that forgery contrived, and made use of by the very authors of the imposture? It is *in eadem genere malitiæ*

malitiæ, as the lawyers speak; and he or she that is capable of the one is capable of the other. A true birth does not require forgery to support it. A true father and mother would not think of having recourse to it. But this is none of the arguments that need illustration. If it does not touch the mind of a judge upon the bare stating of it, it cannot gather strength by any enlargement.

If more were necessary to fix my opinion in this cause, I would, in the *last* place, resort to the account given by Sir John Stewart in his judicial declaration, of Pier la Marre, the man-midwife, who he says delivered Lady Jane. When I consider the circumstances in which Lady Jane came to Paris, past the 50th year of her age, big with child for the first time; leaving Rheims upon a notion that proper assistance could not be had there; undertaking a long and painful journey to Paris, in order to get the best assistance; sufficiently provided with money, and under no difficulty at the first house where she alighted to be advised where the best assistance, and every thing else necessary for her safe delivery, would be found: And when, in this view, I read the account given by Sir John Stewart of Pier la Marre, to whom he com-

mitted the delivery of Lady Jane, and afterwards the cure of Sholto, it strikes me with such inherent marks of falsehood, from beginning to end, and in so many material circumstances, that I cannot resist the conclusion that necessarily results from it.

AND indeed, so sensible were the defender's counsel of the incredibility of Sir John's whole account of this Pier la Marre, that they have laid him aside altogether, and have attempted to substitute a Lewis Pierre Delamarre in his place, as the person who delivered Lady Jane.

I observe, that this circumstance has not struck all your Lordships in the same light; but, for my part, when I first observed this strange attempt to substitute another accoucher in place of the one mentioned and described by Sir John Stewart the father, I thought the defender's cause was abandoned. Sir John has, at least, fixed a clear and distinct description of his Pier la Marre, by his intimate knowledge of him at Liege in the 1721; by his country; his employment as a surgeon in a Walloon regiment; his seeing him repeated times at Paris; corresponding with him for several years; and particularly, by this circumstance, that he went to Naples
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in the 1752, from which place, Sir John says, he received a letter from him; and I submit it to your Lordships, whether it is possible, by any stretch of invention or argument, to apply the description and history given by Menager, the surgeon, of his Louis Pierre Delamarre, to the accoucheur thus described by Sir John Stewart.

The whole appears to me to be a fiction, and that Menager has sworn falsely in order to discover an accoucheur for Lady Jane Douglas, when no such accoucheur ever existed. Sir John's account of his accoucheur is certainly false, and, in effect, given up by the defender; and Menager's evidence is a vain and false attempt, to substitute another accoucheur in his place.

I say the same thing of Gardner, the now invented nurse for Sholto. The discrepancies as to the time when the child which she nursed was brought to her, and the time when that child was taken from her, and place of her residence, and a variety of other circumstances, difference the child which she nursed so much from the account given by Sir John and Mrs Hewitt of the supposed Sholto's nurse, that it is impossible for me to consider this part of the defender's evidence in any other light, than as an attempt to make

make the history of that child as nearly to correspond to that of Sholto, as could be decently contrived. And, if your Lordships are satisfied of the falsehood of Garnier's evidence, with regard to Louis Pierre Delamarre having been the accoucheur of Lady Jane, this of itself must necessarily destroy the whole story of Garnier, the new invented nurse of Sholto.

UPON the whole, after laying the circumstances of this evidence together, I am sorry, that I cannot help being clearly of opinion, that the reasons of reduction of the defender's service are sufficiently proved.

L O R D

L O R D M O N B O D D O.

AS all your Lordships have already delivered your opinions, I have not vanity enough to think, that any thing I can say will have any effect. I do not pretend, in any cause, to make converts to my opinion, much less in this so great cause, which all your Lordships have studied so much. Nor should I give you the trouble of hearing any thing from me, especially as I do not find myself in a very good state of health, if I did not think myself bound in conscience to declare, before your Lordships and this audience, my full conviction that the defender is the son of Lady Jane Douglas.

I should have had some doubt of this proposition, if the cause had still stood on the ground which it was put upon, in the memorial laid before the French lawyers, or even in the condescendence given in to this court. I do not say, that, even upon that footing, there would have been legal evidence against Mr Douglas, according to my notion of the nature of the evidence required in this

this cause; but there would have remained doubts and suspicions in my mind which never could have been removed. The facts then alledged were, *1mo*, That Sir John had entered himself in Michell's book, in his own hand-writing, on the 8th of July 1748: *2do*, That the child which was brought to Michell's the next day was two months old: *3tio*, That no such man as Pier la Marre ever existed; and, *lastly*, That there were suspicions of the birth in France at the time it is said to have happened. But the shape of the cause is entirely changed. It is become altogether a new cause, with hardly a vestige of the old, unless it be the four letters of La Marre, which are said to be forged. And the grounds on which the cause now stands are, *first*, Certain particulars of the conduct of Sir John and Lady Jane, which cannot be explained otherways than upon the supposition of an imposture; and under this head I take in Sir John's declaration and the four letters of La Marre. *2do*, The *alibi* in Godefroy's, now insisted upon, instead of the *alibi* in Michell's. And, *lastly*, The two enlevements. This division, I think, comprehends the pursuers whole cause.

In the entry, I cannot help observing, that this so great change of ground gives me but an unfavourable idea of the pursuers cause. In the very beginning of this action, they frequently told your Lordships, *that they had fully discovered the imposture, having traced it to its source, and were able to produce proofs of it as clear as sun-shine.* But instead of that, so late as a little while before the proof was concluded, I see them hesitating and balancing betwixt the two books of Godefroy and Michell, (the only direct evidence which they can pretend to have in the cause); and, at last, after much deliberation, preferring Godefroy's book, supported by his evidence and that of his wife; which, however, they tell your Lordships, that they themselves did not at first believe; and their French procureur has gone so far as to say, that it was absolutely incredible. This to me gives their cause the appearance of an artificial cause, built upon conjectures and opinions, not confirmed by a plain, natural, and unambiguous evidence which compels the silent, and leaves no room for hesitation or doubt what is proper to follow; and, in my apprehension such the evidence should be that is to take away the liberty of Mr Douglas.

SOME of your Lordships are of opinion, that there is no question of law here, but only of fact. I am of a very different opinion : And I think there are several questions of law, of very great importance, which enter into the decision of this question ; and which, therefore, I will beg leave to state to your Lordships before I come to speak of the fact.

AND the *first* is concerning the *onus probandi*, upon whom it is incumbent. The pursuers set out, in their memorial, with this proposition, and make it the foundation of their whole cause : That Mr Douglas, tho' he has been so long in possession of his birth-right, was acknowledged by father and mother, and was habit and repute their son ; yet is obliged to prove his birth, like any other fact upon which he was to found a claim. This, my Lords, I hold to be a most dangerous doctrine ; and it is *that* which makes this truly a *great* cause : For it is not great names of parties ; it is not the value of the subject, nor is it the question of fact, of however great importance to the parties, and particularly to one of them, that makes this cause great and important in the eye of law. But it is this question of such general consequence, which

which makes this cause not only the cause of Mr Douglas, but of every person who hears me, I may say, of mankind, and not only of the present race now living, but of all future generations ;

Ita nati natorum, et qui nascentur ab illis,

are concerned in this question : For if this were law. Who, of the age of this defender, can say, that he is sure of his birthright, or that he has a state, or belongs to a family ? But such a doctrine I hold to be as erroneous, as it is pernicious and subversive of the common rights of men. For the acknowledgement of parents, joined to the habit and repute, is the charter which every man has for his birthright, and which cannot be declared to be false, forged, or feigned, except upon evidence the clearest and most unexceptionable. As to the positive evidence of birth by the testimony of witnesses, it must, of necessity, be confined to a very few, and those few in a few years will grow still fewer, till at last they must be quite gone. But, as was very well said by one of your Lordships, in proportion as the evidence by witnesses grows weak, the presumption of law grows strong, till at last it becomes so strong, that nothing

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but evidence amounting to demonstration, where there is not *a loop to hang a doubt on*, can overcome it.

BUT the case of Mr Douglas is much stronger than the common case; for his birth-right is not only secured by the acknowledgement of parents, the habit and repute, and the lapse of so many years; but he has brought a direct proof of it by the only two witnesses now living, so far as appears, who were present at it: He has further brought a proof by many witnesses of what must have been necessarily precedent and subsequent to it, *namely*, the pregnancy and reconvalescence; and, over and above all that, he has brought a circumstantial proof, more pregnant perhaps than even the direct proof, and most wonderful at this distance of time. What, my Lords, can take away such an evidence as this? Nothing but proof, the strongest and most direct, of an imposture, by witnesses of greater number, and more credible than those produced by the defender, or by an adamant chain of circumstances, which excludes even the possibility of a birth. In such a case, your Lordships are not to weigh and balance, and proceed upon conjectures and probabilities, as in ordinary cases, where the law allows you

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to find proved, or not proved, according as the evidence appears, and is perfectly indifferent to either side. But, where there is such a weight of positive proof, as well as of legal presumption in the one scale, there must be in the other such a preponderating weight of evidence, as does not suffer the balance to remain a moment *in æquilibrio*, but makes the opposite scale immediately to mount and kick the beam.

THIS I apprehend to be most clear and undoubted law : And therefore the plea of the pursuers, which is founded upon the contrary doctrine, and supposes it necessary for Mr Douglas to prove his birth, as he would be bound to prove any claim of debt, or other ground of action against the pursuers, must appear to me to be built upon a very rotten foundation : And your Lordships must agree with me, if you admit the principles above laid down ; for I have not heard any of your Lordships say, that there is such a proof upon the part of the pursuers, as is absolutely incompatible with the birth, and excludes the possibility of it.

In order to support this strange doctrine, which they have chosen to make the foundation of their cause, the pursuers say, That
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Mr Douglas has not habit and repute in his favour, because there were suspicions raised in Scotland of his birth very soon after it happened : And one of your Lordships went so far as to lay down this general proposition, That there is no habit and repute with respect to a man born in foreign parts. But this I hold likewise to be a most dangerous doctrine, especially at present, when so many of his Majesty's subjects live with their families in foreign parts. If indeed his Lordship had said, that persons had not a habit and repute of their birth at home, the proposition might be admitted. For it is no doubt the opinion of those who are upon the place where the birth happens, who are acquainted with the parents, see their behaviour, and know the circumstances of the case, which makes what we call habit and repute ; and a person born in France, or any other foreign country, has no habit and repute here, but what he brings over with him from that country. The question therefore is, What was the opinion, concerning the defender's birth, of the people in France, British and others, who knew Sir John and Lady Jane, and the circumstances of the case ? Had they, my Lords, any suspicion of the birth ? Not the least. For, tho'

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the pursuers have laid it as one of the articles of their condescendence, that there were such suspicions in France; yet not one of the hundreds of witnesses which they have examined in France has said so; nay, even their own witnesses whom they have adduced to prove the imposture, have shown the clearest conviction of the truth of the birth, notwithstanding of very improper methods which were taken to make them doubt of it; particularly, Madame Michell, to whose house Lady Jane came, within eight or ten days after she was said to have been delivered, and who therefore, next to those who were present at the birth, must have known most of the matter, in a conversation which she had with Mr Andrew Stuart, recorded in his journal, wherein he most irregularly, and with a plain intention to prejudice the witnesses, did tell her as a piece of news, That the parents of one of the children were found: *Ne le croyez pas*, says she; and there he gives her answer in her own words, which amount to this, That they were imposing upon him; and that, tho' others might pretend to be the parents, Lady Jane was truly the mother. And she added, That when she came to her house, she had all the appearance of a woman newly

newly delivered. And tho' her evidence was much softened by such conversations, and by the Monitoire, before she came to depose; yet even then she says, That if Lady Jane was not the mother, *elle auroit joué un furieux rôle*, " she " must have acted a most extraordinary part." And Madame Blainville, who was then in Mitchell's house, and saw Lady Jane every day, so far from doubting of the truth of the birth, shows, through her whole oath, the strongest conviction of it. As to the suspicions in Scotland, it is evident from the proof from whence they came, and upon what grounds they were raised; and altho' those suspicions had been stronger and more general, and had not been raised by the agents of the family of Hamilton, and supported by the grossest calumnies; yet they can avail nothing against the opinion of the people in France, and the proof of habit and repute by so many credible witnesses in the service, to which the pursuers thought fit then to submit, and did not attempt a contrary proof.

THE pursuers would likewise deprive the defender of the acknowledgement of his parents, at least, of one of them, Sir John; because, in his declaration, he has fallen into many mistakes concerning the birth, and particularly

ticularly has coined out of his brain, as they say, an imaginary man for the accoucheur, who never had an existence; therefore, say they, such an acknowledgement of the defender can never avail him.

BUT the pursuers confound two things that are in their nature quite distinct, *viz.* the acknowledgement of parents, and their evidence when examined as witnesses concerning the particulars of the birth. The first is called by lawyers the *tracélatu*, that is, the behaviour and manner of treating the child, from which it is inferred, that they acknowledge him as their child: the other is, the testimony of a witness, which is to be considered like the evidence of any other witness; for a parent, as well as another witness deposing to the particulars of the birth, at the distance of fifteen or sixteen years, may fall into many errors, contradictions, and absurdities. But this will not take from the child the *tracélatu* or acknowledgement of his parent; nor will it hurt the evidence of his birthright, any more than the errors of any other witness: And indeed, it would be the hardest case in the world, if the mistakes of an old man of a father, such as Sir John was, examined upon such an infinite number of particulars, which

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happened so long ago, should be fatal to his child!

AND this leads me to speak of Sir John's declaration, which, though it has been allowed to be printed, and to make part of the state, as a *circumstance of evidence*; yet, like many other circumstances in this cause, it has not with me the least weight; not only because it was not taken upon oath, without which, it cannot be legal evidence; but chiefly, because it was taken in absence of the defender. For, in such a cause as this, the defender could be in court only one of two ways, either by the days of compearance being run, or by a condescendence being given in. And as neither of these was the case, Mr Douglas was as much absent at that examination, as any other man. Now, that such an examination should be evidence against him, especially in such a cause, is contrary to the law of this, and, I believe, of every other country, unless where the inquisition is established: Even in the Tournelle, the examinations of witnesses in absence, are not evidence against the party, till he is brought into court, and confronted with the witness. And indeed, if your Lordships were to admit such an examination for evidence, it is impossible to know

know where to stop; for, by the same rule, every witness examined in absence must be held as evidence, provided only he be examined before a judge. So that a party, in this way, may have a great deal of evidence against him, of which he never heard. And it ought to be further considered, that the defender made the objection, while Sir John was alive, that his declaration could not be evidence; and, by application to your Lordships, desired, that it might be cancelled, and Sir John re-examined in the proper manner upon the same facts. So that, if the pursuers delayed the re-examination of Sir John, who was their own witness, till he was dead, they have themselves to blame: And your Lordships must not, on account of their negligence, offer such violence to the law of evidence, as to admit for proof, the declaration of a witness in absence of the defender.

But, as this is a strong objection in law, the circumstances of fact attending this declaration are such as destroy its credit entirely with me. For, in the first place, it was obtained by perjury from the court, upon an affirmation of a fact absolutely false, *viz.* That Sir John was immediately going out of the country, with an intention to withdraw him-

self from your Lordships jurisdiction. Upon this information, Sir John, an old man of seventy-five, in a very bad state of health, was taken out of his bed, and examined for three days, in presence of your Lordships, upon a multitude of questions, prepared with great deliberation by the pursuers, but which had never been seen by Sir John, nor had he the common time for preparation and recollection which every witness is intitled to.

In this situation, it could have been no matter of wonder, if, deposing to so many facts, at the distance of so many years, he had fallen into very great mistakes. But he has not fallen into so many as the pursuers would make your Lordships believe; and particularly, with respect to La Marre, in saying, that he was a Walloon, he has not gone far from the truth; for *Montreuil sur mer*, where La Marre was born, is within a few leagues of the Province of Artois, which is a part of the Walloon country; and it is very likely, that La Marre, and the people of Montreuil, spoke a *Patois*, resembling that of Artois; from which Sir John imagined, that he was a Walloon. As to the time and place of his acquaintance beginning with him, viz. at Liege in the 1721,

it is a mistake that any witness might have fallen into at such a distance of time; and it is very likely, that Sir John may have confounded him with another man of the same profession, whom he had known at Liege, in the same manner as he has mistaken a journey which he made from Dammartin to Paris, after the birth, for a supposed journey which he says he made from Rheims to Paris before the birth; and, as to the circumstances of concealment concerning La Marre, which he mentions, they may have been so far real, that La Marre being at that time not licenced, and liable to a penalty for practising, did desire that Sir John might conceal his being the accoucheur.

But, supposing Sir John had fallen into much greater errors concerning La Marre, it is a strange inference, which the jurymen would make from them, that Sir John was speaking of a La Marre quite different from the La Marre whom he had always named as the person who brought Lady Jane to bed, and who told Menager that he had delivered a Lady, described by him in such manner that it must have been Lady Jane, and who also gave the child to the nurse Germaine in the year 1722, which could be no other than

Sholto. And from thence, they take occasion to set up two La Marres, one the La Marre of Menager, as they call him, whose existence they cannot deny; and the other, Sir John's La Marre, whom they treat as an imaginary person of his creation. But this, my Lords, is arguing most unfairly. If indeed they could have shown, that there was another man of the same profession of the name of La Marre in Paris in the 1748, they might have pretended, that Sir John's description applied to him, and not to the La Marre named by Menager. But, as they cannot pretend that, it is a very unfair conclusion, that the La Marre named by Sir John from the beginning as the accoucheur, and with whom he corresponded by letters, and who was the only man of that name and profession at that time in Paris, was not the La Marre of whom he speaks in his declaration, though he may have fallen into sundry mistakes about him.

BUT supposing still further, that Sir John, in his declaration, had not only fallen into mistakes, but had willfully said what was false, which I am persuaded none of your Lordships believe, What could be inferred from thence against the defender? Nothing more than a suspicion that Sir John was tell-
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ing falsehoods, in order to cover a false birth. The same suspicion, or a stronger, will arise against a party in whose favour a witness perjures himself; yet the party will not lose his cause on account of the perjury of such a witness: And, in a very late case of a borough-election, Sir John Anstruther won his cause, though two of his witnesses were convicted and punished by your Lordships as being guilty of perjury and prevarication upon oath. And there is this difference betwixt the two cases, in the defender's favour, that the witnesses in Sir John Anstruther's case, were witnesses produced by him; whereas Sir John Stewart was the pursuers witness.

A fourth question in law is, What the effect of the delay of the action in this case is? And, 2^d, Whether there be any delay? For one of your Lordships doubted, whether the pursuers could have insisted on this challenge immediately after the birth, and during the life of the Duke of Douglas. But I hold it to be certain law, that they could. For with respect to Sir Hugh Dalrymple, he had an immediate interest, being one of the Duke's heirs or line, if Mr Douglas was a supposititious child. And as to the Duke of Hamilton or his brother Lord Douglas, they had an

an eventual interest, by which, in certain events, they might have succeeded to the Duke of Douglas, if Mr Douglas was taken out of the way; or, in certain events, Mr Douglas might have succeeded to them: And it was upon these grounds, that the Duke of Hamilton's title was sustained to carry on this process; tho' his interest was so eventual and contingent, that it was a thousand to one that ever he succeeded to the Duke of Douglas, or Mr Douglas to him.

THE delay then being certain, let us consider what the effects of it are in law; and these can be no other than to give a double force to the presumption of law in his favour, to supply every defect in his proof, and to deliver him from the necessity of accounting for many things which otherways he would have been obliged to account for: And, indeed, it would be the most cruel case in the world, if the challenge of a birth should be delayed for so many years, then, when the party happens to succeed to a good estate, he should be immediately attacked by those who had the same title before, but not the same interest, and should nevertheless be obliged to go to proof with his adversaries upon equal terms; and yet this would be
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the case with Mr Douglas, if he were to reap no advantage by the pursuers delay. While the Duke lived, and the defender had nothing, they did not envy him the honour of being the son of Lady Jane Douglas. But, as soon as he succeeded to the Duke's estate, they began this suit against him: And they were the more inexcusable for this delay, that they say they had suspicions of the birth immediately after it happened; for otherways they might have pretended, that they had not the least suspicion of the imposture till after the Duke's death; and therefore could not raise the action sooner.

The defender, therefore, in this case, has no occasion to seek for a Madame le Brun, an accouchée, or the witnesses that were present at the delivery: The law supplies all that: But, if any witnesses are dead, yet if it can be proved, that they said so or so, the law will make this hear-say evidence, which, in other cases, would not be good, effectual to the defender. And, in this manner, the law will revive both Mrs Tewin, and Elly Caw, and make *their* evidences of Lady Jane having been with quick child, as well as Mrs Gals.

There are other questions, of law, which I shall state to your Lordships, and concerning the

rule of evidence : A most sacred rule, upon which our lives, as well as our properties, depend. And the *first* is, That, in no action of this kind, where a crime is charged, the pursuers are intitled to say, that the witnesses who are most necessary, as having best access to know the fact, are accomplices in the crime. For this is plainly begging the question ; and, supposing the crime already proved. Thus, in a case such as this, of a *suppositio partus*, the chief witnesses for the defender, and, in many cases, the only witnesses, must be the persons that are most about the Lady, such as her chamber-maids, and her most intimate companions. And if these are rejected as witnesses, who must best know the truth, upon pretence of their being accomplices, How is it possible that the defender can prove his birth ? If La Marre had been alive, and Le Brun had been found, the pursuers would have said, that they were likewise accomplices, as well as Mrs Hewit and Mrs Glafs ; and for the same reason : So that the pursuers require, that the defender should prove his birth, and at the same time make it impossible for him to do so, by depriving him of the most necessary witnesses.

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But more particularly, with respect to Sir John, Mrs Hewit, and Mrs Glafs, whom they make accomplices all three, and, for the same reason, they should have added a fourth, *viz.* Miss Claw; because, as she was about Lady Jane's person, and dressed and undressed her as well as Mrs Glafs, she must have known if there was any imposture. If Sir John had been called upon by the defender as a witness, I apprehend, he ought to have been admitted, after so long a delay; though, in other cases, he no doubt would not have been a habitue witness for the defender. At the same time, I own that his testimony in favour of the defender would have been suspicious, if he had been contradicted, or even not supported, by other less suspicious witnesses. But having been called as a witness by the pursuers themselves, it must appear to your Lordships something extraordinary, that they should object to their own witness as an accomplice, and desire your Lordships to reject him on that account. And I appeal to your Lordships. Whether, during so long an examination, he gave any signs of guilt, or of wilful falsehood.

As to Mrs Hewit and Mrs Glafs, they were both likewise examined in your Lordships's presence.

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presence: And with respect to Mrs Hewit, your Lordships will remember, that she behaved with the greatest calmness and sedateness, without any of those emotions that must be supposed in a person guilty of such a crime, and without the least appearance of perjury or wilful falsehood, whatever mistakes she may have fallen into, being an old infirm woman, and deposing to so many particulars at such a distance of time. As to Mrs Glais, upon whose late examination your Lordship very justly laid so much weight, her behaviour upon oath was a perfect model for all witnesses: The greatest calmness, distinctness, and readiness at the same time; and she was so far from showing any forwardness in favour of the defender, that tho' her deposition was all very strong in his favour, every question that was put by the pursuers being answered against them, she never went the least beyond the interrogatory put to her, but contented herself with answering it simply and plainly: And though once, and but once, she was a little fretted and ruffled, by the many teasing and captious questions put to her by the pursuers, not for information but with a plain design to in-flame the witness in contradictions; yet I did
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not for that think the worse of the witness, but rather the better, as she showed that proper indignation which every honest witness ought to have, when he sees himself suspected of perjury or prevarication. To believe such a witness perjured is not only contrary to law, in my apprehension, and the rule of evidence, but it is want of common charity: And yet the pursuers, by making her an accomplice, do fairly admit, and your Lordships that have spoken hold it so too, that unless she be perjured, the defender must be the son of Lady Jane Douglas. The cause is fairly put upon this issue; and your Lordships, by giving the cause for the pursuers, must pronounce this witness perjured, who behaved, at the time she was examined, so well, that she seemed to give satisfaction to all your Lordships, and to the numerous audience, in whose presence she was examined.

Your Lordships have heard a very critical examination of Mrs Hewit's letters to Mrs Clif, (then Tibby Walker), as well as of Mrs Hewit's evidence. The number of dates in which she was right, and also the number of those in which she was mistaken has been exactly calculated; and it has been

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shown, that her letters are very blundering and inaccurate, contradicting sometimes one another, and contradicted, in some particulars, by her evidence. But what can be from thence inferred? Nothing, in my opinion, but that Mrs Hewit was a woman of a memory not very accurate, nor of a head very clear or distinct. But with respect to the imposture, so far from being a proof of it, they furnish, in my apprehension, a very strong argument against it: For Lady Jane is allowed by all your Lordships to have been a woman of very good parts, and Mrs Hewit must be supposed to have acted in concert with Lady Jane, and under her directions. Now, how is it possible to suppose, that she would have allowed Mrs Hewit to write such senseless letters, loading the imposture with so many particulars concerning Lady Jane, the children, and the nurses? which was furnishing just as many opportunities for detection; for Lady Jane, though she did not understand Latin, would understand very well the meaning of the maxim that *Veritas latet in generalitate*, as there is nothing plainer or more obvious to a much weaker capacity than Lady Jane's, than that a feigned tale should be as little

little encumbered with circumstances as possible.

But those letters appear to me to prove one thing very clearly, that Mrs Glas was no accomplice : For, how is it possible to suppose, that Mrs Hewit, who certainly was an accomplice, if there be any imposture, should write so many particulars concerning the birth, Lady Jane's recovery, &c. to another accomplice who knew that the birth was all a farce ? This is such a thing as, it is believed, never happened before since the beginning of the world : And it is impossible to give any other account of it, except what I think a most improbable one, namely, that Mrs Hewit wrote those letters on purpose to furnish evidence in support of the imposture, in case it should be challenged. But, *first*, I think this is much too great a refinement of cunning : And if judges will indulge themselves in such suspicions, they may make a deep plot of the plainest and simplest facts ; and in that way turn the clearest and most direct evidence against the party in whose favour it is adduced. If Lady Jane had intended to procure such evidence in support of the supposition, she certainly would have employed a better pen than Mrs Hewit's ; or, at least,

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have revised and corrected those letters which she designed for evidence of the truth of the birth. But, *ad*. If Lady Jane or Mrs Hewit had intended that those letters should have furnished such evidence, we must suppose, that the confident Tibby Walker would have been enjoined to keep them carefully, and accordingly would have so kept them: Whereas it is evident, that there were many more letters that passed betwixt Mrs Hewit and Tibby Walker, which are now lost; and those which remain were preserved by mere accident.

AND this observation may serve as an answer to a circumstance of strong suspicion much insisted on by the pursuers; namely, the correction of a date of a preceeding letter in Mrs Hewit's letter of the 22d of July, giving an account of the birth. For to what purpose this correction, as she was writing to an accomplice who knew the whole to be a farce? She had no more ado but to write a private note to her, or to desire her at meeting to destroy that preceeding letter of a wrong date.

ANOTHER device which the pursuers have fallen upon to deprive the defender of the possibility of proving his birth, while at the same time they insist upon the necessity of his doing

doing so, is to lay hold of the mistakes which the witnesses necessarily must have fallen into, deposing to so many particulars at such a distance of time, and to infer from thence, that the witnesses are perjured, and not to be believed. And this your Lordships will observe is one of the great hinges upon which the cause of the partners turns; for they have examined the witnesses to every particular of the conduct of Sir John or Lady Jane for years together, both in France and Britain, however foreign to the issue. And if these witnesses can be trapped in any mistake, then such witnesses must be held to be perjured. Thus Mr Hewit must be perjured, because he says, that the remittance from Rheims came to Sir John on the day of the birth; whereas it was some days after before it arrived, as if that circumstance were in the least material. Again, Mrs Glas is convicted of perjury, because she has fallen into the mistake of saying, that Lord Blantyre saw Lady Jane alive during her pregnancy; and that nurse Munro's child was carried with them from Dammartin to Rheims; circumstances equally immaterial. And in this way they have gone on examining witnesses about everything they could think of, though not in

the least connected with the cause. Thus your Lordships see a poor woman, I think it is Madam Boucault, is closely examined about the number and order of her own children; how they were nursed, and how long they lived. And Mons. Menager is obliged to give an account of all the acquaintance of his youth, and among many other things intirely foreign to the issue, he is asked, whether or not he did not say in conversation, that such a man told him, that he knew of a lady of 55 that was delivered? and this man is produced by the pursuers to prove Menager perjured.

Your Lordships will seriously consider, whether in this way any the clearest and most distinct evidence may not be set aside. The witnesses in this case, and in every other, come prepared to give evidence to the fact in issue; besides that, they were asked in this case an infinite number of questions which they had never seen, and could not be prepared to answer, concerning a prodigious variety of particulars, which happened fifteen or sixteen years ago; and if they commit mistakes in any particular, or if in the course of such long and teasing examinations, and re-examinations, such as we have in this case, some of which

which lasted for days, the witness grows impatient, answers rashly, and by that means falls into contradictions and absurdities, then must such a witness be rejected as perjured, and not to be believed.

AND if the mistakes or blunders of witnesses, under the torture of such examinations, with respect to facts not material to the issue, will not discredit their evidence as to the material fact, much less will their contradiction to another; and yet this is another principal hinge of the pursuers cause: for they have examined hundreds of witnesses in France, and in Britain, and almost in every country of Europe, concerning every particular of Sir John and Lady Jane's conduct, not only accompanying the birth, but preceding and subsequent to it, for a course of years; and when these witnesses disagree, as they necessarily must do in many particulars of facts which happened fifteen or sixteen years ago, then they conclude, that one or other of these disagreeing witnesses, or all of them, must be rejected. In this way they have set at variance Sir John and Mrs Hewit with nurse Garnier, concerning the history of the second child Shelton. And the pursuers counsel, as I remember, reckoned up

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thirty-two discrepancies ; from which he concluded, that the whole story of Sholto is a mere fiction. In the same manner Sir John and Mrs Hewit are set at loggerheads, and made to destroy one another's evidence ; and they are both said to be perjured, because they are contradicted by Madam Blainville, and some other witnesses, who must have had the story from her, concerning a journey said to be made by Lady Jane to Versailles. Now, this is another way, your Lordships see, by which any the clearest and directest proof may be taken away. If indeed the witnesses differ in the material circumstances of the principal fact, that will, no doubt, shake their credibility. But that is not the case here ; for all the witnesses concur as to the pregnancy and convalescence, and with respect to every material circumstance of the birth itself ; for they all agree as to the day, the place, the particular house, the name of the landlady, the man-midwife, the number, the sex of the children, their condition as to health and strength ; and even with respect to the nurses, the discrepancies about whom the pursuers so much insist upon, they all agree, that the eldest child changed nurses several times, but that the youngest got from
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the beginning a good one, and never had but one.

I have insisted the longer upon these rules of evidence, as I think they apply directly to this case, and are decisive of it. For your Lordships will observe how it stands. The defender has brought a clear proof of his birth, his mother's pregnancy and reconvalence, both direct and circumstantial. The pursuers cannot pretend to have brought any proof strong enough to take away this. But, say they, 1st, The defender's witnesses are accomplices, because they must have known the fraud, if there was any. 2^d, They are perjured, because they are mistaken in sundry particulars. And, 3^d, they contradict one another; and therefore none of them can be believed. This is the true completion of the pursuers' cause; and if the rules laid down above are just, it is certainly a bad one; and to give it for the pursuer, would be to establish a most dangerous precedent, by which any the clearest proof in the world might be explained away.

I have only one objection more to make concerning the rules of evidence, in which, I think, is equally applicable to this case. I suspect, in fact, that this clear and full evidence is not sufficient, and that what was necessarily

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farily precedent and subsequent to it, I mean the pregnancy and reconvalescence; and on the other side, nothing, in my apprehension, but suspicions and conjectures. The observation is, That it behoves a judge carefully to distinguish betwixt evidence and suspicion. Parties, agents, and counsel, when they grow heated in a cause, may confound the one with the other, and may think, that a number of suspicions amount to full evidence; and the people without doors, who are not accustomed to weigh evidence, and to judge of it by certain rules, may be excused for falling into the same error. But a learned and dispassionate judge will not commit this mistake, and he will carefully distinguish betwixt what forces his assent, by leaving no room to believe that the thing can be otherwise; and what only gives him a suspicion that the thing may be. In short, he will distinguish, like every man that is learned in any science, betwixt what is certain, what is probable, and what is only contingent, that is, may be, or not be, as it happens. To trace the maze of suspicions, to pile them up one above another, and link them so together, as to give them the appearance of evidence, shows do doubt very great parts and acuteness, and makes a
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great figure at the bar; but allow me to say, it is a very dangerous talent in a judge. And if judges will take upon them to leave the broad patent road of evidence, and indulge themselves in hunting the trail of suspicions and conjectures, no man's life or property is safe; I say, my Lords, no man's life is safe. For I consider this as a capital cause, not only on account of the great stake which Mr Douglas has depending upon it; but because I think the same evidence which takes away the birthright of the innocent child, must have convicted the guilty parents of a capital crime; and your Lordships, in judging this cause, must consider Sir John and Lady Jane as standing before you under trial for their lives: And, before you can condemn Mr Douglas, you must lay your hands upon your hearts, and say, that there is evidence here, upon which you could have taken away the lives of the parents, as well as the birthright of the child.

And this leads me to examine more particularly the pursuers proof, beginning with the first head under which I have ranged it, *viz.* the conduct of Sir John and Lady Jane, both abroad and at home. I have already spoken of Sir John's declaration before your Lordships,

ships, by which they would destroy the whole account given by Sir John of his birth, and take away from the defender even the acknowledgement of his parents : And I come now to speak of the four letters from La Marre, said to have been forged by Sir John.

And, in the *first* place, The pursuers cannot, with any propriety, call those letters forged, as the essence of that crime consists in using the forged deed, knowing it to be such. Now, that Sir John ever used those letters as a proof of his son's birth, is not pretended : And as to Lady Jane, it was said indeed by one of your Lordships, that she did use them ; but, in my opinion, that was said altogether without evidence. For as to Mrs Menzies saying, that Lady Jane told her she had evidence in her pocket that would make the matter clear, which evidence Lady Jane said, was letters from the man-midwife. In the *first* place, this is but one single witness, and an exceptionable one, being connected with one of the tutors of the pursuers. In the *second* place, How does it appear that these letters were then in the possession of Lady Jane ; for this conversation happened a considerable time before Lady Jane's death, after which these letters made their appearance for the first

first time, and even before Lady Jane went to Douglas-castle, which was many months before her death? And, *lastly*, If we should suppose, without evidence, that those letters were then in her possession, How does it appear that the letters she then spoke of were those very letters, and not other genuine letters of La Marre's? For if any thing is proved at all on the side of the defender, it is proved not only by parole, but by written evidence, that there was an intercourse of letters betwixt Sir John and La Marre.

And, indeed, the letters, when attentively considered, are such, that it is impossible they could be intended to be passed upon the world for originals from any person; for they are plainly copies made by a person who appears neither to have understood the language nor the hand-writing of the letters he was copying: That every one copies made by a man who transcribed them line by line, is evident from this. There is the first of them, there are three words:—the rest of a line torn out, which does not appear at the end of the preceding line, so that it is clear, that the copier, in transcribing, being obliged to cast his eye too high, by which means he took the three words at the end of the preceding line.

preceeding line instead of those which should have concluded the line he was writing. And further, it seems to me evident, that the letters he was transcribing were one or more of them letters written by a Frenchman; for I see phrases in them which could not have come from Sir John, as we may judge from his other French letters, published in the proof, and hardly indeed from any British man. I will give but one instance: La Marre, speaking of the nurse, says, *Je ne puis pas trop me louer de la nourrice*. This is an idiom purely French, not very common even among the French; but so remote from the English idiom, that I have known British men, who spoke and understood the French very well, that would not believe it was a French phrase. Now, Sir John, if he had forged this letter, would undoubtedly have said, *Je ne puis pas trop louer la Norice*, which is very good French likewise, and at the same time agreeable to the English idiom. But as it appears, that this copier could not well read the hand, whenever he was at a loss, he foisted in words and phrases of his own, by which it has happened that there are no doubt several English idioms in them. And besides this, there have been different transcribers

transcribers employed, particularly the postscripts to the last letter, wherein there is mention made of a journey of La Marre's to Italy, are written in a different hand, by which means it may have happened that a postscript may have been taken from another letter written by a different man, and annexed to this, to which it did not belong.

The whole amount therefore of the evidence upon this head is, That Sir John did make out, and give to his wife, very blundering and inaccurate copies of certain French Letters, which Lady Jane never made any use of, but left them among other papers, when she died. And it is submitted to your Lordships, whether such a *circumstance* of evidence, will bear the weight the pursuers lay upon it.

But, supposing the letters to have been forged by Sir John; and supposing further, without evidence, that Lady Jane did make use of those letters, and show them to some person, as an evidence of the birth of her children: What is this more than supposition, that such a story was intended, not to reveal the truth, but to cover a falsehood? But does it prove, that Lady Jane

was not pregnant, or not delivered? Is it not very possible to suppose, that such a man as Sir John, who was in such poverty, and changed his lodgings so often, and was so careless and inattentive, as to throw by papers of the greatest consequence, in the manner Lady Stewart has deposed, may have lost letters, which he had from La Marre, and then forged these, in order to please Lady Jane, who no doubt would be very desirous, after the suspicions in Scotland had gathered strength, to have those letters of La Marre in her possession? It is not therefore evidence, but suspicion; and even, the suspicion lies off entirely, when we consider the weight of the evidence on the side of the defender, and particularly the clear evidence of there having been a correspondence by letters betwixt Sir John and a La Marre, who had the charge of his youngest child.

ANOTHER part of Sir John and Lady Jane's conduct, while in Britain, upon which the pursuers lay great weight, is their not making the proper inquiries concerning the birth of their children, in order to satisfy the world, when it came to be suspected. It must appear to your Lordships very hard, to make the defender accountable for every negligence and omission

omission of his parents. And it is a familiar
 answer for him to say, that Sir John was a
 well-disposed man; that they were good
 high-minded persons and thought themselves
 not to have such inquiries; and that, if
 they neglected to make inquiries on that or
 any other account, their inquiries have now
 been made, and the child's birth as much
 secured as any that could be desired, hap-
 pening in a natural manner, and without
 the least difficulty. But, in point of fact,
 the inquiry was begun only by going to
 Mlle-la-Chappelle, and got a declaration from
 Madame Tewis, in whose house she had lod-
 ged there, and who is one of those that felt
 the living child in her belly. But, before the
 declaration came to her mind, Lady Jane was
 dead: so that the inquiry went no farther.
 But why, say the partisans, I go at Mlle-
 la-Chappelle, why not go directly to Monsieur
 Leveque and Madame Leveque in Paris? This,
 say I too, is putting off a harder task even
 than that, to oblige them only to the
 simple point of delivery, but to
 make them say all that is necessary to
 secure the child. It is a thing that
 I have never seen done, and I think
 that it is impossible to do so.

Jane's conversation with Lord Prestongrange, deposed to by Mrs Glafs, that Lady Jane did think of reforting to La Marre; for, fays ſhe, I believe the man-midwife is ſtill alive. But, by that time, Sir John may have loſt his addreſs; and it is poſſible (and I think the defender is at liberty to ſuppoſe every thing that is ſo) that La Marre, being diſobliged becauſe he had not been ſo well paid as it appears he expected, did not care to give any attestation of the Birth.

I come now to Sir John and Lady Jane's conduct in France at the time of the birth, before and after it; and, during all the time they were at Aix-la-Chappelle, Rheims, and Paris; and, while they were journeying betwixt theſe places; for it ſeems the defender muſt answer for every thing they did, and alſo every thing they omitted to do: And your Lordſhips will obſerve, that all the purſuers objections under this head of conduct come to this; Why did not Sir John and Lady Jane do ſo or ſo? Why did they do ſo or ſo? Why did they go from Rheims to Paris for Lady Jane's lying in? or if they were to go, Why did they go ſo late? Why did they not inform their friends of the birth immediately after it happened? Why did they date their
letters

letters from Rheims, while they were at Paris? Why did they not inform the Duke, and their other friends, that the delivery was at Paris? &c. &c.

As I have already consumed so much of your Lordships time, I will not go thro' all those particulars, which have been already answered more sufficiently than I think is necessary for the defender; and particularly, the two last questions have, I think, been very well answered by one of your Lordships, by supposing what seems to me very natural, that Sir John, who wanted money from the Duke, and wanted also to borrow from my Lord Crawford, and no doubt from others of his British friends, did not care that it should be known to them that he was living in so expensive a place as Paris, which might have hurt his credit with them. For, with respect to his French acquaintance at Rheims, it is clear from the proof, that he made no secret of the journey to them. And indeed how could he, as he travelled in the public voiture, and took a recommendation from Muller to the inn at Paris to which the travellers from Rheims commonly went? And as to him and Lady Jane living in so private a manner in Paris, and seeing so few of their countrymen,

countrymen, (a circumstance which the pursuers much insist upon), it was the plan laid down for them by Madame Andrieux, according to Mrs Glais's last deposition; and it was a rational plan, upon the supposition that Sir John was pinched for money, which undoubtedly was the case. For it is to no purpose that the pursuers reckon up the money that Sir John got when he was at Paris, unless they could tell your Lordships, at the same time, what occasion Sir John had for money while there, and could assure you that he had no debts to pay there, nor lost any money at game, to which it is proved he was addicted: For, that he had not money to answer his demands, is evident from his borrowing, or attempting to borrow, from almost all his acquaintance, such as Lady Wigton, Lord Crawford, Sir William Stewart; and, even while he was at Paris, we have him demanding a small sum of 25 louis d'ors from Monsieur Andrieux, who appears to have been unwilling to trust him, and only did it at last upon the credit of his trunks and cloaths at Rheims. It was therefore not to be wondered that Lady Jane should chuse to live very privately and soberly at Paris, and to see few or no company; especially considering they

question; if there was an imposture here, of which those maids must have been accomplices, Why did they not take them with them, in order to have more witnesses to the pretended birth? Why did they not at least take Tibby Walker with them, whom the pursuers aver to have been an accomplice, especially as the pursuers say that Sir John had plenty of money? And here one of your Lordships made an observation, which was indeed very ingenious, but I must be forgiven to say, did not appear to me very solid, *viz.* that they did not carry Tibby Walker with them to be a second witness to the birth, because Mrs Hewit and she might have disagreed when they were examined as to the particulars. This, I confess, is a refinement of cunning which I cannot suppose, that a person wanting to prove a fact by two witnesses, should take but one, for fear that two might, upon examination, have disagreed in particulars. By this way of refining, the deepest plot may be made out of the simplest and plainest facts. This way indeed the pursuers have argued through their whole memorial. But it is a sort of reasoning that, I think, your Lordships should not adopt. The grief, for example, that Lady Jane expressed
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for the loss of her son Sholto, and the pathetic lamentation over him, which hardly any body can read in Mrs McCrabby's deposition with dry eyes, they say was no more than acting a part, in order to furnish evidence to support the imposture. But it is proved that Lady Jane died of grief for the loss of this child. Was this acting a part? But, say some of your Lordships, the witnesses who prove this, are accomplices, are perjured, or are over-run with prejudices, or have warm imaginations. If this manner of explaining away evidence is allowed, I ask your Lordships how any thing can be proved? But to return to the maids: Upon the supposition of no imposture, there is nothing more easy than to account for the leaving them. It has been shown that Sir John and Lady Jane were at that time, and indeed at every time while they lived, in want of money. In order therefore to save money both in the journey and in their living at Paris, and likewise to avoid the appearance of people of high rank and condition, which the travelling with such a family must needs have given them, but which they were in no condition to support, they determined to leave them at Rheims. This was not only very natural, but is clearly

proved by the depositions of several witnesses.

AND all the neglects and imprudencies, of which the pursuers accuse Sir John and Lady Jane, are in my apprehension, to be understood in the same way, rather as arguments against the imposture than for it. Why, say the pursuers, did Sir John delay so long to inform any body of the birth? Why did he date letters upon the very 10th of July, wherein he did not say a word of it? Why did he not inform the Duke of Douglas, and his friends in Britain, of the particular house where Lady Jane was brought to bed? of the man-midwife, and of the witnesses who were present? &c. To all which I answer, that, upon the supposition of a real birth, all this is easily accounted for, from the known character of Sir John. And even, without laying any weight upon that, Who thinks of the birth of their children being called in question? or who, to prevent suspicions, of which he has no idea, writes to his friends a certificate of the birth of his child, containing all the particulars of the delivery? But, on the other hand, if there was here an imposture, it is impossible to suppose, that Lady Jane, a woman of so
good

good parts, would have neglected the common and ordinary precautions. In that case, there would, no doubt, have been many letters written on the very day fixed for the delivery, giving an account of it: And they would certainly have taken care, that none of the letters should be dated on that day, which did not give an account of it. And, if we could suppose Lady Jane capable of so much imprudence, Can we believe, that Sir John would have forget those necessary precautions, when he shewed so much readiness, and presence of mind, in the carrying on of the imposture, that one day, travelling in a coach with Lady Jane, and Mrs Hepburn, when they were upon their way from Aix-la-Chapelle to Rheims, and seeing a beggar of a deformed and ugly aspect coming up to the coach to ask charity, he immediately spring out of the coach, and put away the beggar, that Lady Jane being then with child, might not see him?

The circumstance of the first note to Mrs Napier, is much insisted on by the puruers, as a proof of the imposture: but which, nevertheless, appears to me quite irreconcilable with the supposition of an imposture. For, even that supposition, they must, or necessi-

ty, have concerted the name of the house where Lady Jane was brought to bed, as well as the name of the accoucheur. And it is impossible to believe, but that Sir John would have had the one name as well as the other at his tongue's end; or, if we could suppose, that he had forgot a circumstance so essential in the imposture, can we further suppose, that in place of Madame le Brun's, he would have named a public-house, such as Michell's, where the falsehood must immediately have been detected? But, upon the supposition of no imposition, it is intirely agreeable to the careless and dissipated character of Sir John, and to the circumstances of distress he had been in, when he mentioned to Mrs Napier, that he should not have at first recollected the name of Le Brun, though he did immediately recollect that of La Marre, with whom he had been much more connected, having corresponded with him so frequently upon the subject of his youngest child.

BUT this mistake, upon recollection, he afterwards corrected in his second conversation with Mrs Napier, and a second note which, upon that occasion, he gave her. And here, some of your Lordships were in a mistake, in supposing, that this correction was not till af-

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ter he had heard of the inquiry made at Mitchell's by Principal Gordon: For this is a supposition, not only without evidence, but contrary to evidence. It is without evidence, because Mrs Napier has not said so; and it is contrary to evidence, in so far as Mrs Napier has said, that this second conversation happened about the time of her lying in, and while she was confined to her room on that account. Now, she lay in upon the 5th of August 1756. Lady Frances Stewart's letter giving her an account of the ill success of Principal Gordon's inquiries, was dated from Spa, the 28th of the same month of August, and consequently could not have come to Mrs Napier's hand till towards the middle of the month of September. So that your Lordships who will suppose, that this second conversation happened after this letter arrived, and after Sir John was informed of the contents of it, must likewise suppose, not only that this conversation happened after Mrs Napier's lying in, which the witness has not said, but that Mrs Napier was confined to her chamber for above a month after her lying in. And your Lordships will observe here a mistake with respect to the old and new file, which the pursuers have fallen into in their memorial,

rial, by which they make the 28th the date of Lady Fanny Stewart's letter, to be the 17th old file; whereas, in the year 1756, there was not in Britain any such distinction of files.

AND now that I am upon the chapter of Madame le Brun, I will beg leave shortly to state to your Lordships the amount of the evidence as to her: And, in the *first* place, I was much surpris'd to hear some of your Lordships deny the existence of this woman; for, if any thing at all is proved upon the side of the defender, not only the existence of a Madame le Brun in the year 1748 is proved, but also her connection with La Marre, both by parole and written evidence. For, in the *first* place, Menager has sworn to so many particulars concerning Madame le Brun and her daughter, with whom he appears to have had a very intimate connection, that even, if your Lordships could suppose perjury in other parts of his evidence, you could hardly suppose it in this. Now, by his evidence, is not only proved the existence of her and her daughter, but also her connection with La Marre. Further, this is also proved by a most unexceptionable witness with respect to the pursuer, viz. Francois la Marre, the brother of Pierre,

Pierre, who in a conversation with Mr Andrew Stuart and Monsieur Danjou, told them, *sur le champ et sans hésiter*, that his brother was connected with a Madame le Brun; that he himself knew her; and accordingly he tells sundry particulars about her; and, among others, says, he believes, she was a scholar of his brother's in the art of midwifery: And this he repeated in a subsequent conversation without variation. And in this last conversation, he told Mr Stuart and Monsieur Danjou, that he had concealed this circumstance from the gentlemen upon the other side: Though that was not true, as it is proved that he told it likeways to them: But he was plainly in the interest of the purfuer, and had been employed by them to make a journey in search of witnesses, for which, no doubt, he expected to be very well paid: And this accounts for his denying every thing concerning Madame le Brun, when he came to be examined upon oath. And, *Le 17*, There is written evidence of the existence of this woman and her connection with La Marre, from La Marre's compt-book, where there is a sum of money set down give by him to Madame le Brun.

It is very true, that this "Madame le Brun

cannot now be found : But, in the *first* place, I submit to your Lordships, whether it be not abundantly sufficient, and even more than is incumbent upon the defender, to prove that a Madame le Brun existed in the 1748, was connected with La Marre, and very probably, as Menager supposes, kept one of La Marre's *depots d'accouchments* ; and which is further confirmed by what Gilles said in answer to the questions put to him by Morand, that La Marre told him the foreign Lady was brought to bed of twins in the house of Madame le Brun. 2^{do}, The woman herself is not now to be found, for a very good reason, namely, that in all probability she is dead, and it is not improbable that the daughter is also dead, considering the way in which she lived. 3^{tho}, A Madame le Brun has been found living in the *Rue Dominique*, in the *Fauxbourg St Germain*, in a house of that street now ruinous, which Madame le Brun answers, in every particular, to the Le Brun mentioned by Sir John and Mrs Hewit ; for she was a widow woman that was a *garde malade*, that took sick women into her house, and had a young girl for her daughter. Whether this be really the woman or not, is of no importance to the defender. It is sufficient for him to say, that

that she might have been the woman, and to have proved, that there was a woman of that name existing in Paris in the 1743, who was connected with La Marre. And the only defect of his evidence upon that head is, that no body has been found who heard this Madame le Brun say, that a foreign lady had been delivered of twins in her house. And yet, upon this mere negative, to be accounted for in many different ways, do the pursuers lay so much weight, that Mr Stuart told Sir William Stewart, that if only Madame le Brun could be found, he would give up the cause, being already quite satisfied as to the pregnancy.

And here your Lordships will observe, how natural it was, that Sir John, having employed La Marre for the accoucheur, should carry Lady Jane to lie in in the house of Madame le Brun; for it would have been altogether improper, that she should have been brought to bed in an inn, such as Godefroy's, or a *Hotel garnie*, such as Michell's. And accordingly, it appears, from Maillefer's letter to Godefroy, that it was Sir John's intention before he left Rheims, to go as soon as might be into private lodgings. Now, there was nothing more natural than that Sir John

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should

should take those lodgings upon the recommendation of La Marre; and it was as natural that La Marre should recommend this woman Le Brun, with whom he was so much connected.

AND, indeed, all the great lines of the conduct of Sir John and Lady Jane in France have been shewn, even at this distance of time, to be probable and natural, without supposing any fraud or imposition. Their going abroad was a prudent step, and the best thing they could do in their situation. Their going to Aix-la-Chappelle, is shewn to have been on account of Lady Jane's health, who imagined that the waters there would do her good. Their going from Aix-la-Chappelle to Rheims, after much wavering and deliberation, is also accounted for; and likewise their last resolution of going from Rheims to Paris. Even their happening to employ this man La Marre is pretty well accounted for, by the connection which he had with British and Irish people in Paris, one of whom may have recommended him to Sir John. Their chusing Le Brun's house for Lady Jane to lie in, has been already accounted for; and the reason of their leaving this house so soon, and going to Michell's, is also proved.

proved. And as they had a house taken at Rheims, nothing was more natural than that, as soon as Lady Jane was in a condition to travel, they should set out for that place. Accordingly they did so; but, on account of Lady Jane's weakness, they stopped for some days at a pleasant village on the road, called Dammartin. As to the children, it was very natural, and I believe commonly happens, that of the two, one should be much stronger than the other; and as that other was a very weak child, it was also very natural that he should not be kept in town, but sent out to the country to be nursed, under the care and direction of La Marre. And there is a circumstance with respect to this youngest child, which is altogether extraordinary in this country, and never could have been invented by Sir John, Lady Jane, or Mrs Hewit, but which is very common in France, namely, the *oudizement* or sprinkling of this weak child by the man-midwife.

Thus the great lines of Sir John and Lady Jane's conduct in France are very well accounted for; and it can be no wonder, that at this distance of time, some particulars cannot be so well explained; but even of these, some have by accident been cleared up, which
 otherwise

otherwise would have had a very suspicious look. Thus, for example, their dropping their man-servant in their journey from Aix-la-Chappelle to Rheims, looked very ill, much worse, in my opinion, than the leaving the maids at Rheims. But, by the accident of the man's wife being alive, this matter is so cleared up, that the pursuers no longer insist upon it as a circumstance of suspicion. Again, it was alledged against Sir John, that, in the year 1749, when he and Lady Jane returned to Paris to steal another child, he lodged in one Renaud's, under his own name of Colonel Stewart; but when he went to the Croix de Fer, where the crime was to be perpetrated, he assumed the name of Duvernes. Now, by the accident likewise of the widow of Colonel Stewart of Ardsheil being alive, it has been discovered that it was her husband, not Sir John, who lodged at that time in Renaud's; and, in like manner, it must be presumed, that every circumstance of suspicion would have been cleared up, if the pursuers had not delayed their process so long; or even, if they had asked Sir John Stewart when he was alive concerning some circumstances which they now very much insist upon, such as their letters being dated at Rheims, while they were at

Paris;

Paris; their delaying for twelve days to give any account of the birth to their friends; and their not speaking of it in their letters dated the same day that it happened.

Let us now consider the tale of the imposture as told by the pursuers, and see whether it be as probable and natural a story, as that which is told by the defender. And here I must beg your Lordships particular attention, if I have not quite exhausted it; as this point has been hardly touched upon by any of your Lordships, nor fully stated even in the defender's memorial; and yet, in a circumstantial proof, which is all that the pursuers here pretend, it is a circumstance of the greatest weight, to consider, whether the tale told by them is probable or natural; or, on the contrary, most improbable and unnatural, as I think I am able to show it.

And I omit the improbability of a lady of virtue and piety, such as Lady Jane is proved to have been, and a Lady who had so high a notion of the rank and dignity of her family, committing a crime of this kind, by which she was to ingraft upon the stock of the illustrious house of Douglas, two beggars' brats. I omit also the improbability, that a woman of Lady Jane's parts would
have

have engaged in a crime, the commission of which was so difficult, as it is a crime requiring many accomplices, not committed in an instant, but continued for a tract of time, and thereby liable to manifold occasions of detection. I do not insist neither how unlikely it was, that Sir John or Lady Jane should even think of a crime that never was committed in this country; nor was it ever thought of by any body here, except Lady Kinnaird, who did only think and speak of it; for she never attempted to put it in execution. But even of this, it does not appear, that Sir John or Lady Jane, who were then abroad, ever heard. Nor do I insist, how much more unlikely still it is, that Lady Jane should commit such a crime, by which she was not only to disgrace her family, but might disinherit her own future issue, as she was certainly capable of having children; and this, without any motive to persuade her, but, on the contrary, the strongest reason to dissuade her, namely, the fear of losing her brother's favour and her pension, upon her being obliged to own her marriage, which accordingly happened. All these considerations, however weighty, I lay aside; and supposing Lady Jane capable of committing so
great

great a crime, and so absurd a one in her situation, without any motive to induce her, I will examine the general plan of this supposition, and the manner in which they executed it; and then I will leave it to your Lordships to judge, whether persons of the least degree of common sense could either have projected such a plan, or executed it in the way that Sir John and Lady Jane did.

And, in *first* place, we have the project of supposing two children at once; a thing of which there is no example in all the many instances of this crime which have been collected by the pursuers from such numbers of volumes. And the reason is obvious; for, in the *first* place, one serves any purpose that could be intended; and, *2dly*, If the supposition of one is a crime of a long and difficult execution, the supposition of two must be infinitely more difficult, and liable to many more opportunities of detection; so that it is hardly possible to escape discovery. Whereas, on the other hand, as there was here no imposture, according to my firm persuasion, the circumstances concerning the one of the children, I mean the one, have wonderfully contributed to support the birth of the other, and form a chain of evidence, which

which I shall state afterwards to your Lordships, such as has hardly occurred in any case.

BUT, *2do*, What is more extraordinary still, and exceeds all belief, is, that they should publish to the world this plan of double supposition, before they had executed it, and give out that they had two, when they had but one, describing very particularly the youngest, as a puny weak child, and telling many other particulars concerning a child that then had no existence, whereby they laid themselves in some sort under the necessity of committing the crime over again, and of finding another child, answering exactly to the description of Sholto; and which, at the same time, was of such an age and size, as could be supposed to be born at the same time with his twin-brother.

BUT, *3tio*, What is more wonderful still if possible, they go to Paris, at the distance of sixteen months, and bring from thence a child, answering in every particular to the description they had given of Sholto, a puny weak child, and a less child than the other; though, as the pursuers say, about four months older; with this additional circumstance,

fince, which I wonder none of your Lordships
 has taken notice of, that he was as like Lady
 Jane, as it was possible that an infant could be to
 a grown person. This is such a concurrence
 and combination of circumstances in favour
 of the truth of the birth, as could not be
 the effect either of chance or design; and
 at the same time, makes the tale of the pur-
 chasers, not only improbable, but morally
 speaking impossible. For, if we could suppose
 a public market of children in Paris, where
 they were to be got of all ages, sizes, and
 complexions, it would be at least a thousand to
 one, that they should have found a child so
 exactly answering the description of Charles,
 less than the other child, yet four months
 older, and at the same time, as like Lady
 Jane as it was possible. And when we join
 to all this, the circumstances Sir John and
 Lady Jane were then in, having in a man-
 ner sold themselves, and having just got a supply
 from my Lord Norton of only 10,000 livres,
 their last resource, yet not sufficient
 to pay on their debts at Rheims, and carry
 them back to Britain, that they should think
 of a situation, or returning to Paris, to
 commit over again the same crime, and to

burden themselves with the maintenance of another child, after the supposition of the first had succeeded so well with them, and when they could have given out, with the greatest probability, that this puny weak child, whom they had always represented as having but a small chance to live, was dead, is a story really incredible.

This is the plan of the imposture concerted betwixt Sir John and Lady Jane, a woman of very good parts, as all your Lordships have acknowledged, which, I think, I may venture to say, was as absurd and irrational, as it was without example or precedent. Let us now consider how this plan was executed. And, in the first place, if they intended such a fraud, it was natural for them to conceal themselves as much as possible, and, for this purpose, to get private lodgings, and go as little as possible to public-houses. Instead of that, they go directly to Godefroy's, a house famous, well known to the people of Rheims, with a recommendation from the chief magistrate of Rheims to Godefroy. They stay there, defy the pursuers, eleven days; and not only so, but they fix the delivery upon one of the days while they were there; a thing which Monsieur Dausen, the pursuer

French.

Trench agent, says, in one of his memorials, was absolutely incredible; and yet this is what the pursuers would have you believe, without telling you, why it is more cre dible now than it was then, that Sir John and Lady Jane, being to return to Rheims, should in the day of delivery while they were at Godefroy's, a house so well known at Rheims, that it was impossible they could escape detection.

Further, after Lady Jane was said to be brought to bed, it was obvious to common sense that she should have remained so long in her private lodgings, where the pursuers admit she was betwixt Godefroy's and Michell's, that she might have appeared to be quite recovered: But instead of that, within eight days after the time of the delivery, away they go to another public-house, where she must have appeared to every body, more especially as Lady Jane did not attempt to conceal herself, that she was not newly brought to bed.

Further still, the choice of the man they named for the man-midwife of this pretended delivery, is most unaccountable. Necessarily, indeed, it was, that they should name somebody for the man-midwife, being, no doubt, an essential circumstance of the tale which

which they must have prepared to tell to the world. But, in order to find a proper name for the man who was supposed to have discharged this office, they should have gone to the register or St Gene, and there picked out the exact man-midwife, who, in all likelihood, would be dead before the birth could be challenged. Instead of that, they named a young man then practising surgery and man-midwifery in Paris, but to be seen in no register.

Further, if there was here an imposture, it was a necessary ingredient in it, that Lady Jane should publish her pregnancy to the world; and it might have been expected, that Lady Jane would rather have overacted her part, as is commonly the case in such impostures, and have ostentatiously shown her big belly to all the world. But instead of that, it is clear from the proof, that she endeavoured to conceal it, even after she had written to her brother the Duke that she was with child, and after it was well known to my Lord Cravand, and her other intimate acquaintances. Now, a real pregnancy has been often concealed; but what could be the meaning or concealing a simulated pregnancy? Upon the supposition, or no simulation, the concealment is easily accounted for, either from

Lady

Lady Jane's natural shyness or bashfulness, and which is common to women of any fashion while they are with their first child; or from her desire to conceal her marriage, which even the witnesses say she intended never to have published, if she had not brought forth a living child.

As yet, as the two maids must have been accomplices, if there was any imposture, how is it possible to suppose, that Lady Jane, having put her secret upon their tongues, should have treated them in the manner she did: for it is proved, that in the journey betwixt Aix-la-Chapelle and Rheims, while Lady Jane was carrying on the farce of a big belly, the maids having refused to travel in the boot of the coach, Lady Jane rated them very soundly, and called them *fancy jades*; and one of them she turned off after she returned to Britain; with which, as the witnesses say, Lilly Claw, for that was her name, was much discontented.

I need not mention some other circumstances which appear to me altogether improbable, upon the supposition of an imposture. I could have given notice of them already; such as the smallness of the belly, a small, and a very walking, second water; the having

of the maids at Rheims; the fixing the day of the birth so soon after Lady Jane's journey from Rheims; and the forgetting a circumstance so material in their story, as the name of the house where Lady Jane was brought to bed, together with Sir John's other omissions and imprudencies, which cannot be accounted for upon the supposition of an imposture. And I shall only mention one further striking improbability in the pursuers story, viz. That Sir John coming to Paris to commit such a crime, should have been at no pains to conceal himself, by taking a false name, or a false country; but, on the contrary, should have fairly given his name and his country at Godfrey's; and, even at Michell's, after he had committed the crime, tho' his name was ill written by the maid of that house: And instead of hiding himself while he was at Paris, he went out every day; and instead of running away as Duvernes did after he had stole the child, so as to get out of reach, he remained at Paris more than twenty days, lodging the greatest part of that time in a public-house; and when, at last, he left Paris, he went no farther than Dammartin, and so on leisurely, till he returned to Rheims, a place where every body knew that he had gone to Paris, in order that

Lady

Lady Jane might lie in there: And after he had left Paris, he returned again from Dam-martin, goes back to Godefroy's house, where he had fixed the day of delivery, and at two other times returns again to Paris, just as if nothing had happened, without showing the least fear or detection.

Such being the case, I appeal to your Lordships, and to every body who hears me, whether this story of the pursuers, which they desire your Lordships to believe, is not so absolutely incredible, in all its circumstances, as hardly to be believed upon the faith of any evidence, even the most full, direct, and conclusive.

And thus much with respect to the first head of the pursuer's proof, containing all the particulars of Sir John's conduct which they think unaccountable, except upon the supposition of an imposture.

The *second* head, under which I have ranged the pursuer's proof, is Godefroy's evidence: With respect to which, I must again bespeak your Lordships patience, as I think I can put that matter in a clearer light than before it has been put; and as it is the only thing, like direct evidence, which the pursuers

fuers pretend to, it is very well worth your Lordships attention.

AND, in the *first* place, I distinguish betwixt the evidence of Godefroy, and that of his books, and will, with your Lordships permission, consider them separately.

AND, *first*, As to Godefroy's own evidence, I have heard him praised by some of your Lordships as a witness most credible, and above all suspicion; but I am so far of a different opinion, that I think he is a witness that cannot be believed; nay, I go further, and I say, he is such a witness as with me goes near to discredit the pursuers whole proof: For I will shew, in the *first* place, that he is a witness that has been instructed; *2dly*, That he has varied his tale; and, *lastly*, That he has sworn falsely concerning a thing which he should certainly have known, the method of keeping his own books.

THE question, your Lordships see, is concerning the application of the accout blank in the name, beginning the 4th of July and ending the 13th, to Sir John, Lady Jane, and Mrs Hewit. In order to make this application, he must of necessity have known two things; *first*, That Sir John and Lady Jane arrived

and before it was taken from him, he must be supposed to have looked at it himself, and shewn to others this account ; more especially if it be true, as the pursuers aver, that he always told them the same story, and consequently must always have applied this account to Sir John Stewart.

2.*ly*, At his first deposition, he had forgot another thing more material, namely, that he kept two books in the 1748 ; for it is plain, that both he and his wife, when they were first examined, spoke only of one book which they kept in that year, though they thought proper afterwards to produce a second, as it was apparent that this book did not contain the tenth part of those who came to an inn so much frequented, not even the half of those who were in their police-book. And as to the proof which the pursuers give of his good memory, from his remembering that Maillefer had written a letter to him, recommending Sir John ; supposing that he had not at that time found the letter, for which we have only Godefroy's word, it was nothing very extraordinary, that being in use to correspond with Maillefer about the affairs of the town of Rheims, and Maillefer, no doubt, being in use of recommend-
ing

ing persons to him, he might have imagined, (and that is all he says), that Stallefer may have recommended Sir John, with whom it is likely he has heard that Sir John was acquainted.

His memory, therefore, it was impossible, that Godfrey could recollect that these three travellers, neither one more, nor one less, had been at his house precisely on the 4th of May 1747. And what only remains to be inquired is, whether he could have learned it from his police-book: for that is the only way, as your lordship will observe, that Godfrey pretends to fill up any other accounts blank in the names. Now, what says his police-book with respect to Sir John and Lady Jane? Truly, in the *6th* place, that they arrived the 24th; and, in the *7th* place, it says he only had two guests, Sir John and Lady Jane. It is therefore clear, that Godfrey must have learned, either from the *Travellers* papers, and *Edinburgh*, or from private information, that Sir John and Lady Jane arrived at his house upon the 4th, and must have been in the room with them, as soon as by means of such he had learned of their arrival. In the *1st* of the account, in the *1st* place, it says

same manner as he has filled up other names in his compt-book.

Also thus, it appears, that the very foundation of Godefroy's evidence, is from information of one kind or another; and that even after he got such information, he applied the accompt merely by conjecture to Sir John and Lady Jane, and Mrs Hewit, rather than any other three persons that might have been in his house at that time.

The *next* thing I undertook to show was, that he had varied his tale. This is evident from Monsieur Danjou's memorial above mentioned, intituled, *Exposé de faits*, written after Godefroy's deposition in the Tournelle, to which it refers. There it is expressly said, that Sir John and Lady Jane paid their bill upon the 8th, and then went out of Godefroy's house. Your Lordships therefore must presume, that Godefroy did depose in the Tournelle, that they went out of his house upon the 8th; whereas, he now deposes, that they remained in his house till the 14th.

And, *lastly*, Godefroy, I say, has sworn falsely as to the manner of keeping his accompts, when he has deposed, that every body that came to his house had his name entered in one or other of the compt-books. For it is

is now evident, as shall be shown afterwards, that many people must have been in his house (as we are admitted by the pursuers) who had his accounts opened for them in either one or both books.

It now appears, that this witness is utterly ignorant, having been instructed, having viewed the tale, and having sworn falsely as to a thing he certainly should have known, in the way of keeping his accounts. And as to Madame Godefroy, it is plain, that she has implicitly followed her husband, for she knew nothing of the matter, when he was first examined in the Tourneille, not to mention her not entering the name of Stewart, in either her pocket-book; and yet she has not contradicted his pocket-book, but has upon it to apply, an account, for the purpose of strengthening it, to Sir John and Lady Jane, who say that they appear to have entered by themselves, without any attendant, upon the 7th of July.

But I further say, that when you thus use a witness instructed, and swearing falsely, it must give your Lordships a very bad opinion of the value of the present evidence, more especially when you consider this case of Godefroy's concerning his own house.

with Monsieur de Ruiffeau's oath concerning Michelle's book. These books were the two hinges upon which the pursuers cause turned; but as they were inconsistent with one another, it was long matter of deliberation with the pursuers, upon which of them they were to make the defender stand trial for his birthright. This doubt they had not determined in favour of Godcfroy's book at the time they examined this Monsieur de Ruiffeau; for otherways, to what purpose examine him concerning Michell's book? And it is besides evident, from his examination, that they did not intend ever to have shown this book of Michell's, which at that time was locked up in the Tournelle; for, if the book itself was to be produced, to what purpose examine a witness concerning the state of it, and the manner in which it was kept? In this state of the cause, they produced this man Ruiffeau to depose concerning it: And his oath, from beginning to end, is a series of falsehoods, all tending to prove, that this book was an authentic record, regularly kept; and such therefore as merited faith. And, among other things, he says, that the entry of Fluratl, upon the 8th of August, was in a hand different from any of the entries of that or the

the preceding page; a manifest falsehood, intended to prove, or at least to raise a suspicion, of what had been averred by the pursuers in their *plainte* to the Tournelle, that this entry was of Sir John's own hand-writing. Now, that there could not be mistakes in the witnesses, but intended falsehoods, and downright perjury, is evident from this, that he had been employed by the pursuers, in the way of his office, to inspect the state of this Lock, to deliver it over to Monsieur Buhoc, and, upon that occasion, to make a *procès verbal*. And, as it is clear, from the proceedings in France, and indeed is of itself evident, that the pursuers, founding their claim entirely upon this Lock at first, must have considered it very diligently before they put it into the Tournelle. It appears to me, not only that this witness is perjured, but that there is the strongest suspicion of labornation of perjury, when I see the agents for the pursuers perjured, and employed by them, and therefore bound to be under their direction, in the manner in which they must have known that the Lock was false. I must therefore say, that the perjury is manifest, and that you are bound to consider it as such, and to give credit to the testimony of the witnesses of a different

ting, by which Mr Douglas's birthright was to have been taken away.

To this witness, thus manifestly perjured, I must join Madame Mignon, acknowledged by the pursuers own counsel to be perjured. I must join also Francois la Marre, most grossly and willfully perjured, about a fact of great consequence in the cause, viz. his brother's connection with a Madame le Brun; and also Monsieur Giles, the surgeon, who has sworn, that he gave the same account before your Lordships commissioner of the story told him by La Marre of the delivery of a foreign Lady, that he gave to Morand and Moreau, when the contrary is clearly proved by written evidence. When I consider, that all those witnesses are clearly perjured in favour of the pursuers, besides others, whose evidence, like that of Madame Michell's, has been softened, I must conclude, that it was not for nothing that those witnesses swore so. And when I further see it in proof, that one of the most material witnesses, by whose evidence Mr Douglas was to be proved the son of one of the meanest mechanics in Paris, I mean Mignon, was practised upon by promises, and by some money actually given to her son, and more expected by him, I must confess to your Lordships

Lordships, that I have the worst opinion of the pursuers proof; and if they had proved ten times as much, I would not have believed it. It is true, the promises to Mignon are proved only by the woman herself imprudently telling to the people with whom she drank, that such promises had been made her. But how else could practices of this kind be proved? It is not before witnesses that a person is corrupted; nor could your Lordships expect to find it set down in Mr Andrew Stuart's journal: But it is proved here in the same manner as it was proved to your Lordships, in sundry election cases that were lately before you, where the only evidence of the corruption was (and, indeed, it is almost the only evidence that, by the nature of the thing, can be the imprudent acknowledgement of the party to their neighbours and acquaintance, that they had got money or promises. But, besides the promises thus proved to have been made to Mignon, and which, your Lordships will observe, are special and particular promises, not general and vague professions of kindness and services, it is proved by a witness of their own, namely the son of this Mignon, that a small sum of money was actually given to him, under the name of loan,

by Monsieur Danjou, their French procureur, and the loan of a greater sum was, by the same Danjou, negotiated for him.

THE character of the gentleman I have just now mentioned, Mr Andrew Stuart, has been much insisted upon by some of your Lordships, as setting him far above the suspicion of such practices. But, sitting here, it is not characters that I am to regard, but evidence: And as the pursuers lawyers have used a great deal of freedom, more than I think the cause required, and, I am sure, more than is supported by the evidence, with a character much more respectable, *viz.* that of Lady Jane Douglas, the friends of this gentleman will excuse me, if I state against him what appears in evidence, and what I think very material in the cause.

FOR I cannot at all agree with what was said by one of your Lordships, That the conduct of the cause has nothing to do with the cause: But, on the contrary, I must always keep in my view both the private practices upon the witnesses in France and the public proceedings in the Tournelle court, if the proceedings of such a court can be called public. The pursuers have thought fit to publish a very elaborate defence of these proceedings,

ceedings, which, I must own, I thought improper, and even indecent, after what had passed. For, it is clearly my opinion, (and I speak upon much better authority than my own), that these proceedings had a direct tendency to corrupt the very channels of evidence, and to shake the credibility of every witness on the side of the pursuers, however unexceptionable otherways; and I think, to this Tournelle process, the *Monitoire*, which was the child of it, and to the private practices upon the witnesses, the defender may fairly ascribe more than one half of the pursuers' proof, and all the defects and obscurities in his own.

Having said so much of Godefroy's evidence, and, upon that occasion, of the evidence of other witnesses in this cause, I will proceed now to examine the evidence of Godefroy's book, considered by itself; having shown, it is hoped, to your Lordships satisfaction, that it can draw no aid from his or his wife's oath. And here I must again beseech your Lordships patience, as I think I am able to state a little more fully than has been done by any of your Lordships, the objection to the evidence of this book. And,
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in the *first* place, this is such a record, *ex facie* of it, as I am persuaded never was used to take away any man's birth-right, or to invalidate either legal presumption, or positive proof. For it is so irregularly kept, sometimes the husband writing in it, sometimes the wife ; accompts prior in date being set down after others posterior in date ; and so many accompts without names, or even numbers of persons, with every mark, in short, of inaccuracy and irregularity, that it is impossible to give any faith to it : And with respect to dates particularly, it is remarkably inaccurate : For even the day of the week is frequently mistaken, and in the grossest manner : For we have a Thursday, for example, not only in place of a Wednesday or a Friday, but, in one instance, in place of a Sunday. And when we see such mistakes in the day of the week, which is not so ordinarily mistaken, we must suppose that the mistakes in the day of the month are much more frequent : And this evidence of inaccuracy, which arises from the book itself, is still more confirmed by comparing it with his police-book, which he was bound, by the law of the country, to keep accurately, under severe penalties if he did not. Now, this book is confessed to be most inaccurate,

curate, not only with respect to the dates of persons entering, but with respect to the persons themselves, of whom many are wholly omitted: So that but a small part of those that came to the house are to be seen in this police-book. Now, can we suppose that the compt-book, which he kept for his own private use, is more accurate than the book which he kept for the public, particularly as to dates? For your Lordships will observe, that accuracy in the compt-book, with respect to the precise date when the company entered, was of no moment either to Mr Godefroy, or his guests, provided they were not overcharged as to the number of days they staid in his house, or the things extraordinary which they got. Such a book, therefore, does not prove to me, that the persons who are said to enter upon Thursday the 4th of July, did truly enter upon that day. They might have entered a day sooner, or a day later; and it was the same thing as to the guests, if they were charged for no more days than they really staid.

But, supposing this company to have truly entered upon the 4th of July, how does it appear that this company was Sir John, Lady Jane, and Mrs Hewit? And here it certainly will not be sufficient for the pursuers to say,
that

that it may apply to them, because it appears to be applicable to a company of three persons: But they must further say, that it must necessarily apply to them, and can apply to no other company. Now, this they can show only in two ways; either by showing, that every accompt opened in the household-book relates to a person entered in the police-book; and consequently, that, if this accompt cannot apply to any other person standing in the police-book, except Sir John, it must be his accompt; or, *2do*, That at least every body in the police-book has a place in the household-book. Now, instead of the pursuers proving either of these two things, the defender has proved the direct contrary of both. As to the *first*, it is admitted, that there are above an hundred instances of persons who have accompts in the compt-book, but who are not entered in the police-book. As to the *second*, it is admitted, that there are six instances of persons who are in the police-book, but not in the compt-book; and among these, one Wright an Englishman: And it is remarkable, thattho' Mr and Madame Godefroy speak of Englishmen coming commonly to their house, as well as other foreigners; yet there is, I think, but one Englishman that is to be found

found in their compt-book. But be that as it will, I think the defender has a right to say, that Sir John was the seventh instance of persons resorting to the house, and the second of British men, set down in the police-book, and not in the compt-book. But besides these six instances, there are certainly many more who are in the police-book, and are not in the compt-book. For, in the *first* place, there are instances to the number of about forty persons who are marked in the police-book, but who have no accompts in the compt-book. Their names, indeed, the pursuers apply to accompts blank in the names of the persons which they find in the compt-book about the same date. But this is mere conjecture, and the less probable, for that, as has been already shown, there are above an hundred persons in the space only of three years, who are entered in the compt-book, but do not appear in the police-book; and accordingly they are often obliged to fill up two or three accompts in the compt-book, with one name in the police-book. But, 2. There are fourteen instances of persons who are marked in the police-book, some days before they appear in the compt-book. Now, in that interval, they must have had a separate ac-

compt,

compt, not appearing in the compt-book, which is the same thing as if there had been so many different persons who had no accompts in the household-book. And your Lordships will particularly observe, that their entry in the police-book does not depend upon the accuracy of Mr Godefroy in keeping that book, but upon the faith of the officers of police, who, by their *visa* of such a date, ascertain that these persons must have entered before that day: And, therefore, to suppose, as the pursuers do, that those persons are set down of a wrong date in the police-book, is plainly to accuse those officers, without proof, and contrary to proof, of falsehood and forgery in the discharge of their duty. And, *3tio*, Besides all these, it is evident, that there must have been many more from the manner in which those books were kept, which Mr Godefroy has explained to us in his deposition, and which is evident from inspection of the books. For, says he, a man's accompt who entered, suppose, for example, upon the 20th of the month, is entered upon the 3d page, let us suppose, of the book; and his accompt is finished, suppose, upon the 30th of the month; and there is some room left in the page, in which is filled up the accompt of a
man

man who entered, suppose, upon the 15th. Now, I desire to know, where the account of this last man, from the 15th to the 30th, is to be found? And whether or not, in that interval, he must not have had a separate account? And I ask further, suppose he had gone away before the 30th, that is, before the preceeding account was closed, whether any account of his would have appeared in the household-book?

Thus it appears, both from comparing the compt-book with the police-book, and from the manner of keeping the compt-book, that there must have been many persons in the house who have no accounts in this household-book, but must have had either separate accounts in writing, or have accounted by memory with Godefroy and his wife. And when we join to all this, what is deposed both by Godefroy and his wife, that their inn, which had nineteen beds, was so very much frequented, that there was hardly lodging to be got in it, unless bespoke before; while, at the same time, it appears from their compt-book, that there are not there persons set down sufficient to fill a fifth part of their house; and particularly, betwixt the 4th of July, when Sir John entered to the house, and

the 20th of that month, there are but two companies to be found in the compt-book: And when further we consider, that, by great accident, there have been discovered four separate accounts made out by Godefroy, the evidence becomes invincible, that there is not the least necessity of applying this blank account to Sir John and Lady Jane; but that it may be applied to several other companies, which we may reasonably suppose to have been at the same time with them in this house, which was so much frequented.

BUT I go farther, and say, not only that the application of this account to Sir John and Lady Jane is not necessary, but that it is highly improbable. For, in the *first* place, it is very probable that Sir John and Lady Jane, when they came into this inn, would do as they would have done in a British inn, that is, they would have called for a room, and ordered such things as they thought proper for dinner or supper, without so much as inquiring, whether or not there was a *table d'hôte* kept in the inn, a thing which it is likely they never thought of, as this practice is utterly unknown in Britain, and even in France, except in great cities. And tho' they had known or suspected such a thing, it is
not

not probable, that, being full of money as the pursuers say, and not at all frugal or saving persons, they would have chosen to eat at the low rate of this paultry inn. 2^{do}, It is admitted that they did not eat at the *table d'hôte*, but got their victuals in their chamber; and yet, notwithstanding the extraordinary trouble and attendance which that must have occasioned in the house, especially as they had no servant, they are charged in this account at no more than the ordinary rate of the house. If this was truly the case, I will venture to say, that no British man, either before or since, ever got so reasonable a bill in a French house: Indeed, upon the supposition that they got any thing dressed for themselves that was not at the public table, the house would have been wronged; so that the pursuers must suppose, that Sir John and Lady Jane, with so much money in their pocket, fed upon the scraps and offals of this miserable ordinary: a supposition as improbable as that, if such need truly been the case, Godenoy would not have charged them more for the extraordinary trouble they gave him. And, lastly, It is a very strong proof, in my apprehension, of this account not belonging to Sir John and his company, that we never break

fasts charged in it, as in other accounts in this book; for we cannot suppose that these British persons lived without breakfast, or that they did not drink tea in a morning; as it is proved that Lady Jane did every where. And, supposing that she brought her tea with her, yet she must have had besides sugar, cream, bread, and butter. Now, it is a most improbable hypothesis of the pursuers, that they got their butter from Mr Godefroy, and their sugar, cream, and bread, from a coffeehouse.

Thus, it appears, that it is not only not necessary, that this blank account should be applied to Sir John, but that it is not at all probable: And the whole evidence which arises either from Godefroy's oath, or from his books, evanishes, if we only suppose, what is highly probable, that Sir John and Lady Jane eating in their room, did not eat at the ordinary rate of the house; and that they got the whole of their breakfast from Godefroy, as well as their butter.

And indeed, upon an accurate examination of Godefroy's oath, and his books, it appears to me that the pursuers, after much deliberation, have erred in preferring Godefroy and his wife's evidence, and applying this blank account to Sir John, in direct contradiction to their

their police-book, to the book of Michell, where Sir John is set down by name, tho' wrong spelt, as entering upon the 8th of July, and this book supported by the oath of Michell and his wife, who swear positively that the very day Sir John came to their house they remember that his name was set down in the book; and Madame Michell further adds, That it was by this book they accounted with their lodgers for the rent of their rooms: It is certain that the pursuers at first put their cause wholly upon the credit of this book; and they have told your Lordships, that they did not then believe Godefroy's tale, which contradicted it. But they should inform your Lordships, why they did not believe it then, and believe it now; or why your Lordships should believe what they themselves did not at first believe? The case has plainly been, that they were resolved at any rate to find an *alibi*; and, having determined, after much deliberation, and contrary to their first resolution, as appears evidently from Danjou's memorial above quoted, to fix the *alibi* in Godefroy's, they accordingly adopt his tale. But your Lordships not having come to study this case with a resolution to find an imposture; but rather a contrary inclination, will

will be of opinion, that tho' the stories told by Michell and Godefroy cannot be both true, yet they may be both false; and that of the two it is more likely, that the evidence of Michell and his family, swearing in conformity to their police-book, should be true, than the the evidence of Godefroy and his wife, swearing in direct contradiction to their police-book.

I come now to the *third* head of the pursuers proof, upon which I shall be exceeding short: For the last counsel for the pursuers insisted upon them only as a *circumstance* of evidence, (he should have said, I think, of suspicion, for they are certainly not evidence, as they are not brought home to Sir John). And as to the first of them, *viz.* the taking away of Mignon's child in the 1748, one of your Lordships, though of a different opinion from me, was so candid as to own, that the description of Mignon's child, particularly with respect to the colour of the eyes, did not agree with the defender; he might have added, That neither did the baby-cloaths of the child, nor did the description of the persons who carried him away, agree with Sir John and Lady Jane. And even as to the time of this *enlevement*, tho' some of the witnesses

fix it nearly to the time when Sir John and Lady Jane came to Michelle's, yet there are others who say the child was two months old when he was carried away. And as to the second *enlèvement*, it appears to me to be clearly proved by written evidence, that it did not happen while Sir John was at Paris. The written evidence I mean, is a private register of police, kept by the Lieutenant-general in the year 1749, in which is marked, upon the 10th of January, a letter received from the Curé of St Laurent, informing him of a child being carried away by one Duvernes. Now, it appears evident from the Curé's deposition, that he was informed of this *enlèvement* as soon as it happened; and it is impossible to believe, that he would delay informing the lieutenant of it, as he must have supposed, that the person who stole the child would immediately make off with it; which accordingly happened. But, besides this most probable conjecture, the Curé himself has said upon oath, that he is persuaded it was within three or four days after the child came to his knowledge, that he gave information of it to the Lieutenant de police; though your Lordships will observe, that Mr Andrew Stuart gave him a very fair opportunity of acquitting

adjusting his oath to this new discovery, which was made in the books of police, of the letter of the 10th of January, by letting him know what he certainly should not have known, that such discovery was made.

THE destroying in this manner one half of the tale of the pursuers, concerning the *enlevements*, is, in effect, destroying the other half; as it shows most evidently, a thing indeed that is evident enough of itself, that the memory of witnesses, at such a distance of time, cannot be trusted as to dates: For, with respect to this second *enlevement*, there is nothing, one should think, more clearly proved, so far as parole-evidence can go, than that it happened in the month of November, while Sir John was at Paris; whereas now it is made clear, that it must have happened at least a month later, that is, in the end of December, or beginning of January.

THUS I have stated to your Lordships what occurs to me upon the pursuers proof, in which I find nothing but conjectures and suspicions, without any the least thing that deserves the name of evidence, except Godfrey and his books; which are so far from
being

being that plain, direct, unambiguous evidence, which I think necessary to take away the defender's birth-right, that the pursuers themselves tell your Lordships, they did not at first believe it, without giving any good reason why they believe it now more than they did then. Such evidence I think not sufficient to take away the legal presumptions above stated in favour of Mr Douglas, and much less the positive evidence, which I am now to state to your Lordships, but which I will endeavour to do very shortly, as your Lordships time is so much spent, and, I am afraid, your patience altogether exhausted.

This proof is both direct and circumstantial. The *first* consists of the proof of the actual birth, and of what necessarily must have preceded and followed it, viz. the pregnancy and the convalescence.

As to the birth, it is proved by the only two witnesses now alive, so far as appears, who were present at it, viz. Sir John and Mrs Hewitt. As to Sir John, he was certainly not a habile witness for Mr Douglas; nor does it appear, that Mr Douglas ever proposed to examine him, but, being called upon by the pursuers, I know nothing in law that hinders him to be a proper witness. In so far as he is legally examin-

ed upon oath, and when both parties were in court. And as to Mrs Hewit, I have already said, that her evidence cannot be rejected, except for a reason which will be sufficient for depriving the defender of the evidence of the most necessary witnesses, and almost the only witnesses that can be expected to such a fact, namely the domestics and servants.

As to the pregnancy, it is proved by such a multitude of witnesses, and so incontestibly, that I must be forgiven to wonder, that any of your Lordships should have the least doubt of it. For it is certainly proved, if a fact of that kind be capable of proof, and that it is understood to be capable of proof, is clear, both in our law and the Roman law, from two examples that were mentioned by one of your Lordships, and which I will not repeat. And indeed, it were very extraordinary, if so common a phenomenon, as that of a woman being with child, could not be proved by witnesses.

It was said, by some of your Lordships, that the appearances of pregnancy, which could not be denied, were fictitious; and that the assuming such appearances was a necessary part of the imposture. But, in the *first* place, there is not the least proof of any thing assumed or fictitious in Lady Jane's appearance;

appearance; and, *2do*, We must believe the direct contrary, and that the appearances of pregnancy of Lady Jane were natural and real, unless we believe at the same time, that not only Mrs Hewit, but Mrs Glas, Mrs Hepburn and Mrs Greig, are grossly and wilfully perjured. As to Mrs Glas, she has not only sworn to every external appearance of pregnancy, but also to that internal and sure symptom in a woman who was regular in that respect at other times, I mean the *diffusio menses*; and further, she has sworn that she felt a living child in her belly. And, when to her is joined Effy Caw, the other maid, who is dead, and Mrs Tewis also dead, who said the same thing to two most credible witnesses, there are no less than three witnesses to her being with live child. Then there is Mrs Hepburn, who has deposed to appearances of pregnancy, in which she could not be mistaken; particularly the size of Lady Jane's breasts, which she saw naked, and which struck her the more, that she was intimately acquainted with Lady Jane, and knew that she was naturally a flat-breasted woman. And it is vain to raise the matter, and to say, as some of your Lordships have done, that Mrs Hepburn is a woman of a lively

lively imagination, and that she is mistaken, and the like. But we must fairly say, that she is perjured, if we do not believe, that Lady Jane had all the natural appearances of a woman with child. Now, it must appear to your Lordships, and to every body that hears me, a matter of very hard digestion, to say, that a woman of so unblameable a character as Mrs Hepburn, and so universally esteemed by all her acquaintance, should wilfully perjure herself in favour of an imposture, carried on by persons with whom she had no connection, besides that of acquaintance, nor the least interest or concern whether Lady Jane was with child or not. Then there is Mrs Greig, Lady Wigton's woman, who has deposed to every appearance of pregnancy, both in the face and person, in so much that, says she, one must have been blind not to have seen it. And as this woman had occasion to see her so often, and so familiarly, it was impossible she could be deceived by assumed appearances; and if, upon the credit of those witnesses, it be once allowed, that Lady Jane had all the natural appearances of pregnancy, then all the other witnesses, who had not occasion to see her so familiarly, but have deposed to the external appearances,

ces, must be allowed to be all good witnesses of the pregnancy; and, in that way, there are above twenty witnesses of this fact.

WHAT further strengthens this evidence, and shows that these appearances must have indicated a real pregnancy, is, that not only her capacity to have children is proved beyond all contradiction, but also her miscarriage afterwards at Rheims; as to which, tho' there be that difference among the witnesses as to time and other circumstances which it is natural to expect at such a distance of time; yet it would be pushing incredulity much too far, to believe, that therefore there was no miscarriage at all.

As to the negative proof which the pursuers have attempted of Lady Jane's not being with child, they have failed altogether; because they have not brought one witness, who had ever seen Lady Jane before, that did not believe she was with child. And as to the evidence of strangers, who did not observe Lady Jane to be with child, if it proves any thing besides their want of memory and attention to a person whom they had never seen before, it proves too much, namely, that Lady Jane, while she was carrying on this imposture, appeared before strangers without

the assumed appearances of pregnancy, even in the stage-coach of Rheims, to which place she was to return after her pretended delivery at Paris.

THUS the pregnancy appears to be proved beyond all contradiction, as far as any thing of the kind can be proved by human testimony. And this alone appears to me to be decisive of the cause. Nor, indeed, has any of your Lordships said, nor any of the gentlemen at the bar, but that, if Lady Jane was pregnant, or if she had all the natural appearances of a woman in that situation, she must be presumed to have been brought to bed, unless the pursuers will prove, either that she miscarried, or that she had some disease which gave her those appearances of a woman with child.

As to the reconvalescence, I shall only mention one circumstance, which none of your Lordships has touched upon, but which appears to me to be also decisive of the cause, joined with the appearances of pregnancy. It is what the witnesses, particularly Madame Blainville and Madame Michell, say of her appearance in Michell's. Madame Blainville, one of the pursuers own witnesses, and whom they have not yet added to the list of the perjured,

jured, he deposed that she had then all the appearance of a woman newly delivered, or newly recovered of some disease; and not contented with this general account of her, he described her person very exactly, and, among other things, has said, that her breasts were remarkably flat, and likewise her belly. Madame Michell, when she was first inquired at about this affair, before she was influenced by the Tournelle process, Monitoire, or private conversations with Mr Andrew Stuart, spoke of her being newly brought to bed when she came to her house, as a thing that could not be doubted. For, says she, Madame Stewart kept her bed in my house on account of her being lately brought to bed. And in that conversation with Mr Andrew Stuart, in which he thought proper to tell her by way of news, that the parents of one of the children were found, she told him positively, that, when she came to her house, she had the appearance of a woman newly delivered: And even at last, when she came upon oath, she said, she had the appearance of a sick woman. Now, compare the description of Lady Jane given by these two witnesses, with her appearance at Aix-la-Chapelle, Liege, and Rheims, and say, whether something

thing must not have happened betwixt her being in those places, and her coming to Michell's about the 20th of July. What had become of those big breasts, and big belly, which it is proved were no assumed appearances, but real, which she had at those places? And how came she by that sickly air and look of recovery, which it is clearly proved she had at Michell's, but of which no one witness says a word at any of the former places; not even those in the stage-coach, who did not perceive that she was with child?

THIS appears to me to be so strong, that, in my apprehension, it comes very near to a proof of the actual delivery: And as it is by the pursuers own witnesses, who they have not yet said are perjured, and who certainly could not be mistaken in a thing which appears to have drawn their attention so much, it does not occur to me what can be said against it.

I come now (for I hasten to be done) to the circumstantial evidence of this delivery. And, if I shall be able to state it clearly to your Lordships, it will appear, I trust, even stronger than the direct evidence; and such as it is impossible there can be any fallacy or deceit in; unless we can suppose a number of wit-

witnesses having no knowledge or acquaintance with one another, all combining and instructed (and it must have been a difficult lesson) to link together different facts and circumstances, so as to make one connected story.

I will begin with Menager, who is proved by other witnesses to have been the most intimate acquaintance that La Marre had. If the story be true which he has told, of La Marre's informing him of the delivery, by him La Marre, of a foreign Lady of an advanced age, who came from Rheims, of twins, and for her first birth, and of male twins, and one of them a sickly delicate child, which, on that account, was left to the care of him La Marre, and was by him given out to nurse at Belleville or Menilmontant: If this, I say, be true, the pursuers do not deny, nor have any of your Lordships denied, that this foreign lady could be any other than Lady Jane Douglas, to whom the description given suits in every particular. And as to the time when this happened, the witness has fixed it as well as it was possible to do from his memory, and by very good marks. For, says he, it was not in the year 1747, because I was then in the army; it was not in the year 1752, because, in that year, I

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went

went to Spain upon a public occasion, which he mentions; and, after that, I saw La Marre very little. It must, therefore, have happened betwixt these two periods, that is, either in the year 1748, or 1749. But, if he had not fixed the time so nearly, it is impossible to suppose, that La Marre could have brought to bed any Lady, answering in every particular to Lady Jane, that was not Lady Jane; especially, if we join to the description of Lady Jane, that of two male twins, the condition of one of them, and its being left under the care of La Marre, and being given out by him to nurse at Belleville, or Menilmontant; at which last place, as we shall afterwards show, there was actually a puny twin male-child given by La Marre to nurse in the year 1748. And your Lordships will observe, that La Marre did not speak of this thing to him once or twice over, but several times, not only after the thing happened, but before, writing he should be present and assistant at the birth, as he apprehended there might be difficulty in it, on account of the age of the Lady: And, for that purpose, he sent to seek him at his father's house about the time the thing happened; but he was out of the way,

THE pursuers therefore are obliged to have recourse to their ordinary shift, and to say, that this witness is wilfully and grossly perjured. And your Lordships will now attend to the evidence upon which they make so bold an averment. And, in the *first* place, this Menager is one of the most credible witnesses that was examined in France; for he is eminent in his profession of surgeon, and is employed by the very best families in Paris. Then he was not first discovered by the defender's agents, but was first in the hands of Mr Andrew Stuart and Monsieur Buhot, his assistant; and, as he has said, told the very same story to them, which, however, Mr Andrew Stuart thought proper carefully to conceal; and it was only by mere accident that he was found out by the defender. Further, this witness is not contradicted in any the least circumstance of the story by any credible witness, except that he says, he believes, that one Mellet was present when La Marre told the story in the *Hôtel Dieu*; and Mellet says, that he was not present: For as to the stories told by Mellet and Gilles, which they say they heard from La Marre in the 1747, they are stories quite different from Menager's; for Gilles says, he heard him on-

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ly speak of the delivery of a lady of a foreign name, without saying any thing of the age of the lady, of twins, or from whence she came; so that this description of the lady may apply to twenty that La Marre may have brought to bed. And as to Mellet, he did not hear La Marre speak of any delivery he had actually made, but of one he was to make, from which he expected great things.

UPON what grounds, therefore, shall I believe this so creditable witness, found out accidentally by the defender, to be perjured in his favour. I have heard but two reasons suggested by any of your Lordships; the first is, that he says, that La Marre signed sometimes with the addition of his Christian name. Now, it appears by his contract of marriage, as well as by the evidence of other witnesses, that he signed only by his surname: But tho' he may have done so in his contract of marriage, where there could be no mistake about the person, may he not in his private letters, which Menager had occasion chiefly to see, have signed by the name of Pierre, in order to distinguish him from his other two brothers? Is it not natural, nay even necessary, to suppose that he did, to avoid confusion

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and mistakes, more especially as Francois La Marre was of the same profession?

THE other ground upon which one of your Lordships maintained the charge of perjury against this witness was, that he has said, that La Marre, whom his Lordship was pleased to consider as a low paultry fellow, very ignorant of his profession, gave lessons of midwifery. But, in the *first* place, it is proved, that La Marre was skilful in his profession, by one who had a good occasion to know, having assisted with him at an unnatural birth; and, *2dly*, That he did actually give lessons of midwifery, is proved by the conversation betwixt Francois la Marre and Monsieur Danjou, where he says it in the strongest manner; because he mentions it as a thing of which there could be no doubt; for speaking of Madame le Brun, among sundry other particulars which he tells of her, I believe, says he, she was one of my brother's scholars for Midwifery.

BUT further, if Menager has told this false story, so wonderfully adapted in all its circumstances to the story of Lady Jane, it is clear, that he must not only be perjured but corrupted. For, it is impossible to suppose, that for nothing, he would have contrived

so circumstantial a tale. Now, I desire to know, who it was that corrupted him, and taught him so artificial a story? The answer must be, that it was the British agents who conducted Mr Douglas's affairs at that time in France. For it is a fact well known, that, when this affair came to proof, it was wholly in the hands of British counsel and agents; and there was not on that side any French procureur, such as Monsieur Danjou, who is proved to have given money to the son of one of the most material witnesses. Now, what grounds have your Lordships to lay such an imputation upon gentlemen from this country, whom your Lordships know, and who have hitherto behaved in such a way, as not to merit such an imputation?

BUT, say the pursuers, (for I think none of your Lordships said so), the Dutches of Douglas was at a great deal of pains with this witness, and had him several times dining with her. But, if your Lordships knew what teasing, or rather torturing examinations those witnesses underwent out of mere good will, without being obliged by any legal authority, you would not be surpris'd that the Duchess showed great civilities to them, especially to so creditable a man as Menager; for this ve-

ry witness at first underwent an examination, which lasted a whole night; and a second examination could not be finished in one day, but was carried on for three days successively. How disagreeable this must have been, as well as a great loss of time, and interruption of business to a man so much employed as Menager, is easy to see.

The only objection, therefore, that remains to Menager's evidence is, that he is single. If it were so, it were hard from thence to infer, that he is perjured, or that a single witness in a circumstantial proof is not to be believed. But the fact is not so; and, on the contrary, he has a wonderful concurrence to support his evidence. And, in the *supplément* I lay down Gilles, in which passage Menager says that La Marre told of the delivery of this foreign lady. It is true, Gilles has deposed the contrary; but he is manifestly perjured, in so far as he has sworn, that he gave the same account of the matter to Monsieur Moreau than he did to the court. For it is probably, without any doubt, that he swears to lay down from his own memory to write a true and faithful account of what he gave an account quite different, and indeed almost entirely particular with Menager's story; nay, as Menager has

said

said, he remembered more than he did; for he remembered that La Marre had told him that the delivery was in the house of Madame le Brun; and, when this written evidence is supported by the testimony of such men as Morand and Moreau, the two most creditable witnesses that have been examined in France, there can remain no doubt with your Lordships, that this witness has been taken off, probably by the means of Monsieur Buhot, in whose family he was employed, as well as other witnesses in this cause; so that, when he came upon oath, he wilfully suppressed and concealed the truth.

BUT, neither is Menager supported by Gilles alone; for there is still a more wonderful concurrence with him of the nurse Garnier, who has deposed, that, in summer 1748, while she was living in Menilmontant, she got from this very La Marre, the friend of Menager, a weak delicate child, who was a male, a twin, and his brother also a male, who was a foreign child, and was visited by foreign gentlemen, one of whom expressed such a concern about him, that she supposed he was the father; and at last, at the end of about eighteen months, this child was taken from her, not to be given to another nurse at Paris, but to be carried

ried further off. In short, the child agrees so exactly to the description of Sholto, that it is impossible to suppose it could be any other; infomuch, that the pursuers are obliged again to have recourse to their ordinary shift, and to say, that this poor woman, whom the defender likewise discovered by mere accident, has adapted her story to Sir John's; which is, in other words, saying, that she likewise is perjured, and, I think, of necessary consequence, also corrupted. But I have heard from none of your Lordships any reason to believe so, or to doubt, that this child she got from La Marre was not Sholto, except that the time when she says she got this child from La Marre, does not exactly agree with the time when Sholto was given out to nurse; for, as to the year when it happened, it is fixed by this child being nursed upon the milk of her son Jerome, who is proved by the parish-register to have been born in the month of March 1748; and the season of the year is also fixed, viz. the summer; only Garnier says, that she had nursed her son Jerome six months before she got this foreign child, which brings the time of getting this child to the end of August, or beginning of September, instead of the month of July.

But this is but a small inaccuracy at this distance of time; and, if it were greater, it is impossible to suppose, that, in the same year 1748, this woman Garnier should have got from this very La Marre, a child other than Sholto, but answering, in every the least particular, to the description of Sholto.

BUT it will not serve the pursuers purpose to say, that this poor woman is perjured. They must further add to that list her husband and her sister-in-law; nay, they must further set down as perjured, her neighbour Madame Boucault, who concurs with her in every particular, and has remembered some things more accurately than Garnier; for she has said, that the child was kept only sixteen months, which is the truth; and she has described one of the stranger-gentlemen that came to see the child, in such a way, that there is little reason to doubt, but that it must have been Sir John. And to this woman's credibility I have not yet heard the least objection.

Now, the fact being thus established beyond, I think, all possibility of doubt, that there was a weak twin foreign child given out to nurse at Menilmontant by La Marre in this year 1748, your Lordships are next to consider

consider how this tallies with the evidence of Menager, and the story told by Sir John and Lady Jane. Menager knows no more of the matter, than that La Marre informed him, that he had brought to bed a foreign lady, answering in every particular to the description of Lady Jane, some time betwixt the years 1747 and 1750, of twins, one of whom being a puny delicate child, was therefore left to the care of La Marie, and by him sent to nurse in the country, either at Belleville or Menilmontant: And there he leaves the story. But where he leaves it, Garnier and her whole family, and her neighbour Bocault, persons all utterly unknown to Menager, take it up, and tell your Lordships, that in summer 1743, this very man La Marre, of whom Menager speaks, living at the *But St Rache*, brought to Garnier, then living at Menilmontant, a weak twin-child, corresponding in every particular to Sholto, and to the child described by Menager; and, when to his evidence is joined the account which Sir John and Lady Jane have uniformly from the beginning given of the matter, *viz.* that La Marre was employed to deliver Lady Jane: that the youngest child was left under his care, being a weak delicate child, and was by him

him given out to nurse at Menilmontant, and there kept for about sixteen months, when he was taken away, and brought to Rheims; it is submitted to your Lordships, whether this be not such a chain of evidence, as neither chance nor design could have formed in support of a falsehood.

AND this, if I am not mistaken, is precisely what is called circumstantial evidence, in opposition to direct evidence. For, in circumstantial evidence, the witnesses do not depose to the fact in issue; for that would be direct evidence; nor do two or more of them commonly depose to the same fact or circumstance; but different witnesses depose to different facts and circumstances, which link and tally together, and thereby form what we call a chain of evidence, such as, I think, is formed in this case, so strong, that it appears to me impossible by any art or force of argument to break it. And in this respect, your Lordships will consider the difference betwixt the circumstantial evidence on the part of the defender, and the pretended evidence of the same kind on the part of the pursuers; for this last appears to me to form no chain composed of links hanging upon one another, but to be made up of a parcel of detached circumstances

circumstances of suspicion, having no connection or dependence. Thus, the circumstance of their setting out for Rheims so soon before the lying in, and the leaving the maids at Rheims, have no connection with one another, that I can perceive, nor with the circumstance of dating letters at Rheims while they were at Paris, or of dating letters upon the 10th, wherein they said nothing of the delivery. These are circumstances which do not form any chain that can bind my assent: And they are such, as I think, can be easily accounted for, upon the supposition of a real birth.

It was observed by one of your Lordships, that Garnier's evidence depends intirely upon Menager's; and that, if Menager, being corrupted and perjured, cannot be believed, so neither can Madame Garnier. But this is a mistake; for, though Menager had never been examined, Garnier's evidence would have stood good by itself, and would have formed, independent of Menager, a wonderful chain of evidence. For, without Menager, it would still have been proved, that Garnier received from La Marre, the surgeon named by Sir John as the person who brought Lady Jane to bed, and to whose care

Sholto

Sholto was left, a child in the 1748, answering in every particular to the description of Sholto, to be nursed at Menilmontant, the very place where Lady Jane said at Rheims her youngest child was nursing. So that there are two chains of evidence, which taken either separately or together, afford to me irresistible conviction.

AND indeed, these circumstances put together, not only persuade me, that the account given by Sir John and Lady Jane is true; but that the tale told by the pursuers is impossible to be true. And here I must beg your Lordships particular attention, and correction, if I am wrong. For, as this is not stated in the papers, nor by any of your Lordships, it is possible, that I may lay more weight upon it than it deserves.

THE tale told by the pursuers is, that there was no delivery in July 1748; no Pierre la Marre employed; and no child belonging to Sir John and Lady Jane given out by him to nurse at Menilmontant. Now, your Lordships will compare with this story of the pursuers, what I apprehend is proved beyond all doubt on the other side: In the *first* place, That Sir John and Lady Jane mentioned a la Marre from the beginning as the man-
midwife

midwife who brought Lady Jane to bed; and this, without any the least variation. The weight of this circumstance the pursuers seem to feel, and want to evade, by alleging without any probability or proof, that La Marre is a common name in France; and therefore, it was no wonder that Sir John stumbled upon his name; *2do*, It is a fact that cannot be denied, that a La Marre, though not licensed, nor in any register, from which Sir John could take his name, was practising surgery and midwifery in Paris in the year 1748; and the only man, so far as has been hitherto discovered, of that name practising then in Paris. *3th*, It is proved beyond all dispute, that Sir John and Lady Jane, while they were at Rheims, said, that their youngest child was under the care of this man midwife, this La Marre who had brought Lady Jane to bed, and was by him given out to nurse in some place in the neighbourhood of Paris. *4th* It is proved, both by parole-evidence and writing, that Sir John did correspond with this La Marre, upon no other subject that can be supposed, except this child that was under his care. And, *lastly*, It is proved, that Lady Jane, while she was at Rheims, did name

Menilmontant as the place where her son was nursing under the care of this La Marre. This is proved first by Miss Primrose, who recollected, upon hearing Menilmontant named, that this was the place which Lady Jane named at Rheims as the place where her son was nursing. Madame Rutledge also remembers, that she named the place to her; and though she has forgot the whole name, remembers that it began with an M. And further, Mrs Greig deposes, that Lady Jane desired earnestly of Lady Wigton, when she went to Paris in the year 1748, that she would send her accounts of her son Sholto; from which the witness very justly infers, that Lady Jane must have given Lady Wigton a direction where he was to be found: And it is one loss, among many others, which the defender has sustained by the delay of the action, that when this discovery was made of the nurse at Menilmontant, Lady Wigton was by that time dead; so that he could ask her no questions about this address, which she must needs have got for Lady Jane's youngest child: And even when she was examined in the service, she was so ill as to be confined to her house; and was therefore examined, not in presence

of the jury, but by a macer; so that her evidence is not so full in many things as that of other witnesses.

This is the account given by Sir John and Lady Jane of La Marre and the youngest child. Now, your Lordships will be pleased to compare this account with what is proved to have happened to the only practising surgeon of the name of La Marre in Paris in the year 1748. It is proved, that in that year, or in the year 1749, he brought to bed a foreign Lady who had come from Rheims, corresponding in every particular with Lady Jane Douglas, of twins, one of which, being very delicate, was given out to nurse by La Marre at Belleville or Menilmontant, in the neighbourhood of Paris: And it is further proved, that the same La Marre, who brought to bed this foreign lady, did give out a child to nurse, answering in every particular to the description of Sholto, in the very year 1748, to a woman living in Menilmontant. Now, let any impartial man combine those circumstances together, and say, whether it be possible, upon the supposition of the pursuers, That there was no delivery, no La Marre employed, no child belonging to Sir John given out by him to nurse in the neighbourhood

hood of Paris, in the year 1748: Whether, I say, it be possible, that Sir John or Lady Jane could have named, as the man-midwife, a La Marre to whom all the things above mentioned happened in the year 1748, adding too his Christian name of Pierre; so that there could be no mistake as to the person: That they could have said, that he had the care of their youngest child; and further, have actually named Menilmontant as the place where he was given out to nurse, to which very place it is proved that, in the 1748, La Marre gave a child to nurse, answering in every the least particular to the description of Sir John's youngest child. As the pursuers deal so much in calculation, and have given your Lordships a very long one, the longest that, it is believed, ever was in a law-paper, but founded upon a fact which is certainly not proved; namely, that the two children, in the 1743 and 1749, were carried away by a British man; I wish they had calculated what chance it was, that Sir John should stumble upon the name of this man La Marre, to whom all those things happened in the year 1748; and should further, by a most extraordinary kind of divination, tell a story concerning a La Marre and a child,
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which is, in every article, the same with what happened to La Marre, even to the very name of the place where he gave the child out to be nursed. This double chance of their naming such a man, and telling such a story concerning him, being compounded and combined, according to the rules of calculation, would, I am persuaded, produce the odds of at least 1,000,000 to 1 against Sir John being so fortunate; which is saying, in other words, that the thing is morally impossible.

And thus I think I have proved, that the pursuers story is not only not probable, not only is not proved, but is really impossible to be true: And as I observed before, that the pursuers have not chosen the best ground, when they preferred the evidence of God-froy and his book to Michell and his book; so I cannot help observing here, that they have still judged it worse, when they adopted the story of the successive supposition, and did not rather allow that Sir John had really got two children in 1748, when he wrote to all his friends, that Lady Jane was delivered of twins. Upon this supposition, they might have said, as they deal so much in making assumptions, that this La Marre, whom they re-

proposed

presented as a mean low man, was an accomplice, and assisted Sir John in stealing two children. And surely, Sir John and Lady Jane, strangers in Paris, and speaking the language but imperfectly, had much need of the assistance of a native in committing so difficult a crime. And they might have further allowed, that this La Marre did truly give out to nurse at Menilmontant the weakest of the two children. By framing their tale in this way, they would have got free of the most incredible hypothesis of the successive supposition, the one at the distance of fifteen months from the other. And they might have accounted for Sir John's naming La Marre as the man-midwife, and corresponding with him by letters; and for this La Marre giving out a child to nurse in the year 1748, answering exactly to the description which Sir John and Lady Jane gave of their youngest child; and also for Lady Jane naming the very place to which La Marre gave out this child. In short, they would have evaded the whole weight of the evidence arising from Garnier's deposition, and from Sir John's naming and corresponding with La Marre. Whereas, upon the hypothesis they have adopted, they have told a tale so improbable

bable in itself, and in such direct contradiction to the evidence, that it is impossible to be believed.

Thus I have gone through the defender's proof likewise, in many more words than I proposed; but I could not bring what I had to say into less compass, without omitting some things that I thought material. And to sum it up, It does not appear to me, that the defender's cause rests upon one or two things, but upon several points, any one of which, if you find proved, you must give the cause for him. For, not to mention the questions of law which I stated in the beginning, and which I think are decisive of the cause in his favour; and supposing you should see cause to reject the evidence of the birth itself by Sir John and Mrs Hewit; yet, if you believe that Lady Jane was pregnant, or had the natural appearances of it; or, if you believe that she had an actual miscarriage at Rheims; or, if you are convinced that her appearance in Michell's was so different from her appearance at Aix-la-Chappelle, Liege, or Rheims, or even in the stage-coach from Rheims to Paris; if you believe that Menager's story is true; if you believe that the story of Garnier and her whole family, and her neighbour

neighbour Boucault is not a lie; if it be true that Sir John and Lady Jane named La Marre from the beginning as the person who delivered Lady Jane; or, if it be true, that they corresponded with him; that they had their youngest child under his charge at some place in the neighbourhood of Paris, and that they actually named the place where it is proved La Marre did put a weak twin child in the year 1748, corresponding in every particular to Sholto: If, I say, any one of all these particulars is true, then must the defender win his cause. Now, in order to disbelieve all this, consider how many witnesses your Lordships must hold to be perjured. I cannot repeat their names from memory; but I will read them to your Lordships. There is first Sir John, Mrs Hewit, Tibby Walker, Mrs Hepburn, Miss Primrose, Mrs Greig, Nurse Mangin, and others, who have sworn to the miscarriage at Rheims; Monsieur Menager, Madame Garnier and her family, Madame Boucault, Madame Maillefer, Madame Rutledge, and all those who have deposed to the correspondence with La Marre: Of these a muster-roll might be made of above twenty, whom your Lordships must find all perjured by the decree you are to pronounce in favour

your of the pursuers. If, indeed, there was direct and positive proof upon the other side, by a greater number of more credible witnesses, That Lady Jane, for example, had assumed the appearances of pregnancy, and wore pillows upon her belly, as Lady Kinnaird did; or that, on the day when she pretended to be delivered, two new-born children were brought in to her; or if failing of such direct proof, there were a chain of circumstances such as made it impossible that the delivery should have happened, which I have not heard any of your Lordships say is the case, I could very well understand how the witnesses who have sworn to the particulars above mentioned should be accounted perjured, or accomplices in the fraud. But, without such evidence on the other side, I must confess that I think it of most dangerous consequence to reject such evidence, both direct and circumstantial, on the one side, and to pronounce so many witnesses perjured. And I wish with all my heart, that in drawing up the decree in favour of the pursuers, some reasons might be expressed for doing so in this particular case, in order to prevent the consequences of the precedent, which I think is most dangerous to our lives as well as our properties.

I am now come to a conclusion; and I have fatigued myself I believe very near as much as I have wearied your Lordships. If I have delivered my opinion with more warmth than usual, and more perhaps than becomes a judge, I hope your Lordships will forgive me, as I do feel very deeply for this young man the defender; and indeed it is a cause which excites the feelings of humanity more than any I have ever known. I hope, however, I have not mistated any part of the evidence, or laid more weight upon any thing than it would bear. If I have, I am sure it is undesignedly, and I hope to be corrected by your Lordship who have said you are to speak again, or by any other of my brethren. What I lay the cause upon chiefly, is the strange improbability of the pursuers story; the proof of the pregnancy; the appearance in Michell's; and the wonderful circumstantial evidence arising from the depositions of Menager, Garnier, and her family and neighbour Boudault; and from Sir John's naming La Marre from the beginning as the accoucheur, corresponding with him by letters, and naming the very place where he had put the youngest child to nurse. If your Lordships can show that I am wrong in those particulars.

ticulars, I shall very readily give up my opinion: But till that is done, I must continue to believe, that the tale told by the pursurs, is the most improbable that ever was told in any court of justice, supported by the slightest, and contradicted by the strongest evidence, both direct and circumstantial.

LORD PRESIDENT,

THE question I put to your Lordships is, **SUSTAIN OR REPEL** the Reasons of Reduction? *

Lord Justice-Clerk,	Sustain.	
Lord Strichen, -	-	Repel.
Lord Kaimes, -	-	Repel.
Lord Alenmoore, -	Sustain	
Lord Pittfour, -	-	Repel.
Lord Gardenston, -	-	Repel.
Lord Kennet, -	Sustain	
Lord Auchinleck, -	-	Repel.
Lord Barjarg, -	Sustain.	
Lord Coulson, -	-	Repel.
Lord Elphinstone, -	Sustain.	
Lord Glencairn, -	Sustain.	
Lord Glasgow, -	Sustain.	
Lord Macleod, -	-	Repel.

LORD PRESIDENT,

As the Lord Justice-Clerk, properly, I think
 should be asked, "Do the reasons appear to
 you to be satisfactory and sufficient to justify
 the reduction of the duties?"

My Lord, I have no objection to the
 question being put in that manner, and I
 have no objection to the Lord Justice-Clerk

JUDGMENT OF THE COURT.

“ THE Lords having considered the state of
 “ the process, the writs produced, and testi-
 “ monies of the witnesses adduced, and heard
 “ parties procurators thereon, and having ad-
 “ vised the same, with the memorials, obser-
 “ vations, and other papers given in by each
 “ party, They SUSTAIN the Reasons of Re-
 “ duction, and reduce, decern, and declare
 “ accordingly.”

THE END.

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